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A LEGISLATIVE HISTORY OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (PUBLIC LAW 99-499)

TOGETHER WITH

A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

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U.S. SENATE

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CONTENTS

VOLUME 2

Page

Chapter II: S. 51 405
- Statements of cosponsors on introducing S. 51 407
- S 51, as introduced, January 3, 1985 413
- Administration testimony, February 25, 1985 455
- Senate Report No. 99-11 (Committee on Environment and Public Works), March 18, 1985 590
- Background and Issues Relating to the Reauthorization and Financing of the Superfund (Joint Committee on Taxation) 718
- Senate Report No. 99-73 (Committee on Finance), May 23, 1985 790
- Order referring S. 51 to Committee on the Judiciary, May 24, 1985 830
- S. 51, as reported, May 24, 1985 831
- Order of procedure, September 16, 1985 991
- Senate debate, September 17, 1985 992
- Senate debate, September 18, 1985 1027
- Senate debate, September 19, 1985 1079
- Senate debate, September 20, 1985 1109
- Senate debate, September 23, 1985 1179
- Senate debate and incorporation of language in H.R. 2005, September 24, 1985 1221
- Senate debate and passage of H.R. 2005, September 26, 1985 1293
- H.R. 2005, as passed by the Senate 1311

CONTENTS OF OTHER VOLUMES

VOLUME 1

Chapter I: Superfund Amendments and Reauthorization Act of 1986 1
- Public Law 99-499 1
- President's approval, October 17, 1986 171
- The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 173

VOLUME 3

Chapter III: H.R. 2817

Statements of cosponsors on introducing H.R. 2817 1535
H.R. 2817, as introduced, June 20, 1985 1540
Background and Issues Relating to House Bills for Reauthorization and Financing of the Superfund (Joint Committee on Taxation), May 8, 1985 1678
House Report No. 99-253, Part 1 (Committee on Energy and Commerce), August 1, 1985 1764
House Report No. 99-253, Part 2 (Committee on Ways and Means, October 28, 1985 2076
House Report No. 99-253, Part 3 (Committee on Judiciary), October 31, 1985 2213
House Report No. 99-253, Part 4 (Committee on Merchant Marine and Fisheries), October 31, 1985 2275

VOLUME 4

Chapter III: H.R. 2817, continued

House Report No. 99-253, Part 5 (Committee on Public Works and Transportation), November 12, 1985 2506
H.R. 2817, as reported, November 12, 1985 2831

VOLUME 5

Chapter III: H.R. 2817, continued

H.R. 3852, as introduced, December 4, 1985 3563
House debate, December 5, 1985 4014
House debate, December 6, 1985 4203
House debate, incorporation of language in H.R. 2005, and passage, December 10, 1985 4265
H.R. 20005, as passed by the House 4356

VOLUME 6

Chapter IV: Conference Report 4813
Appointment of conferees, February 7, 1986 4815
House Report No. 99-962 (Committee of Conference), October 3, 1986 4818
Senate debate and passage, October 3, 1986 5164
House debate and passage October 8, 1986 5244

VOLUME 7

Appendix I: Emergency Funding 5391
  H.R. 3453 5393
    House debate and passage, October 1, 1985 5395
  H.J. Res. 573 5402
    House debate and passage, March 20, 1986 5404
    Senate debate and passage, March 21, 1986 5406
  H.J. Res. 713 5411
    House debate and passage, August 15, 1986 5413
    Senate debate and passage, August 15, 1986 5416
  H.J. Res. 727 5428
    House Report No. 99-830 (Committee on Appropriations), September 16, 1986 5431
  House debate, September 16, 1986 5434
  House debate and passage, September 18, 1986 5439
Appendix II: Additional Bills 5441
  Administration Bill (introduced as H.R. 1342, S. 494, and S. 972) 5443
  H.R. 1940 5527
  H.R. 3065 5547
    House Report No. 99-255, Part 1 (Committee on Science and Technology), September 4, 1985 5562
Appendix III: Amendments not printed elsewhere 5591
  Amendments to S. 51 5593
  Amendments to H.R. 2817 5613
Appendix IV: Statements inserted in the Congressional Record after passage commenting on or clarifying certain provisions 5629
Section-by-section index 5643

CHAPTER II

S. 51

[From the Congressional Record, permanent edition, January 3, 1985, pp. 111- 135]

Statements of Senators Stafford, Lautenberg, Mitchell, and Humphrey on introducing S.51

By Mr. STAFFORD (for himself, Mr. Chafee, Mr. Durenberger, Mr. Humphrey, Mr. Hart, Mr. Moynihan, Mr. Mitchell, Mr. Baucus, Mr. Lautenberg, and Mr. Cranston):

S. 51. A bill to extend and amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD (for himself, Mr. Chafee, Mr. Durenberger, Mr. Humphrey, Mr. Moynihan, Mr. Mitchell, Mr. Baucus, and Mr. Lautenberg):

S. 52. A bill entitled the "Acid Rain Control Act of 1985"; to the Committee on Environment and Public Works.

By Mr. STAFFORD:

S. 53. A bill to amend the Clean Water Act, and for other purposes; to the Committee on Environment and Public Works.

ENVIRONMENTAL LEGISLATION

Mr. STAFFORD. Mr. President, I am taking the earliest possible opportunity to introduce several bills for consideration by the Environment and Public Works Committee and I ask unanimous consent that they be printed in the Record. These bills include the Superfund Improvement Act of 1985, the Acid Rain Control Act of 1985, the Clean Water Act Amendments of 1985, and Federal-aid highway legislation. Senator Durenberger is also today introducing a bill to amend the Safe Drinking Water Act.

The Committee on Environment and Public Works completed action on all of these issues in the 98th Congress; none was taken up by the Senate. Failure to act on any of three of these issues—highways, Superfund, or clean water—means Federal funds will not be available for those programs. Failure to act on any one of the five means losing ground to environmental contamination, or infrastructure decay, or both.

This early introduction is intended to signal that the committee will take up these issues early in the 99th Congress and, I believe, have bills ready for Senate action on most, if not all, no later than this spring.

I would like now to discuss briefly each of the bills I have mentioned:

* * * * * * * *

p. 113

SUPERFUND IMPROVEMENT ACT OF 1985

I am also introducing the Superfund Improvement Act of 1985. It is essentially a combination of Superfund amendments reported from the committee during the last Congress by a vote of 17 to 1 with some other relatively minor Superfund amendments adopted by the Senate last year by a vote of 93 to 0.

There is one change, however. Because there was some controversy regarding the victims assistance provisions of last year's committee bill, it is possible that a modified version will be advanced during this year's committee consideration. Therefore, with the assent of the sponsor of those provisions, Senator Mitchell, the bill contains only a blank where that language was found.

In addition to the Superfund Improvement Act, I am proposing two amendments to it. The first proposes a taxing scheme for raising the $7.5 billion, 5-year extension proposed by the committee last year. I am introducing this amendment to assure that if the need for floor action on extremely short notice arises, there will be a taxing scheme available to the Senate which has been widely circulated and examined.

The second amendment I am offering would establish a private right of action for the victims of hazardous substances released into the environment. I expect that there will be considerable debate prior to the committee or Senate votes on this proposal and am introducing it now so that there will be ample opportunity for the serious consideration it deserves.

To assure availability of these proposals, they are printed in the Record under "Amendments Submitted".

* * * * * * *

[NOTE.- pp. 115- 120
contain the bill
as introduced,
which is reported
in this volume at
p. 413.]

* * * * * *

pp. 130- 132

Mr. LAUTENBERG. Mr. President, I am pleased to join my distinguished colleague from Vermont, the chairman of the Environment and Public Works Committee, as an original cosponsor of legislation to reauthorize the Nation's Superfund program.

The cleanup of abandoned toxic waste sites is a top priority for New Jersey. In no other State is the Superfund program more important. Fully 95 of the 786 sites on the National Priority List for cleanup are in New Jersey. The most dangerous site in the country, the Lipari landfill, is located in the suburbs of Camden. These is not one county in New Jersey free of sites which threaten human health and the surrounding environment. Therefore, I applaud Senator STAFFORD's hard work last year to strengthen and renew Superfund and his intention to put Superfund at the top of our committee's agenda this year.

Mr. President, it is vital that the Congress take up consideration of the Superfund program as soon as possible. The Superfund program expires in September. It is imperative that Superfund be reauthorized with sufficient lead time so that the Environmental Protection Agency can gear up to run an expanded and accelerated program.

The legislation that we are introducing today is virtually identical to the bill approved by a vote of 17 to 1 by the Environment and Public Works Committee last September. This bill was subsequently referred to the Senate Finance Committee, where it languished in the waning hours of the 98th Congress.

In an effort to gain Senate approval, Senator BRADLEY and I offered an amendment, similar to the legislation approved by the Environment and Public Works Committee, during consideration of the continuing resolution in early October. Unfortunately, opposition to Superfund renewal by the administration hindered approval of the bill.

The legislation that we are introducing today directs and authorizes funds for the testing of toxic chemicals most commonly found at Superfund sites. It requires that health assessments be done at every site listed on the National Priority List and that a more effective program be established for providing information to citizens who are worried about the health ramifications of exposure to nearby abandoned waste sites.

It requires that EPA replace household water, when warranted by conditions around a site. This provision, which I offered in committee, requires that our citizens have at least the very basics: not only clean water to drink, but also to bathe in, to wash their clothes in, and to use for other essential household purposes.

The bill also refines the Federal-State relationships under Superfund, which are one of the most critical elements of any effective cleanup program. This is one of the areas that I devoted substantial attention to in committee because of its importance to a successful program. I was very appreciative that the committee saw fit to adopt these amendments. They would clarify the right to the States to raise their own funds; extend the statute of limitations for filing natural resource damage claims; allow States to get credit for State money spent to clean up Superfund sites eligible for Federal assistance; and to assure that the treatment of ground and surface water be considered a part of the cleanup.

Mr. President, while this bill is a good starting point it is modest in scope. It does not contain the administrative assistance program for compensating victims of toxic exposure included in last year's bill. Nor does it contain a cause of action for seeking relief in Federal courts. I expect that the committee will be very active on these important issues this year. The pilot administrative program offered by my colleague, Senator MITCHELL, represented a good first step, and I look forward to working with him and other members of the committee in fashioning victims' compensation provisions.

In addition, a number of issues were left unresolved last year in an effort to forge a strong consensus late in the session last year. Mr. President, I ask unanimous consent that the text of my additional views to the Environment and Public Works Committee report on last year's bill be inserted in the RECORD at the conclusion of my remarks. These views indicate the areas that I would like to see added as amendments to the bill introduced today.

BHOPAL

The recent tragedy in Bhopal, India, raises several critical issues relevant to the reauthorization of Superfund. The lethal release of methyl isocyanate by the Union Carbide plant swept over the populated city early in the morning. Investigations have confirmed that plant personnel fled, emergency equipment failed to work, and evacuation measures were not instituted until after the release of the poisonous gas. In the wake of the worst industrial accident in history, citizens and officials around the globe are asking, Could it happen to us?

Nowhere is the question of safety more important than in the State of New Jersey. The State is the most densely populated State in the Nation. It is also the third largest producer of chemicals. Recent incidents in the State, including an explosion that released malathion into the air over heavily populated areas, are cause for reevaluation of safety precautions and emergency response capabilities in New Jersey and other communities across the Nation.

Federal emergency response authorities stem for Superfund. In fact, EPA has carried out more emergency response actions than planned cleanup actions, although most people associate the Superfund program with the cleanup of abandoned toxic waste sites.

The Bhopal incident raises a host of questions the Congress should pursue during consideration of Superfund legislation:

What percentage of the American public lives within 10, 20, or 50 miles of facilities that handle hazardous materials?

Do we know what these materials are and what hazards they present to adjacent communities?

What is the adequacy of emergency procedures of State and Federal Governments to respond to environmental disasters?

Does the National Response Team set up under Superfund have the capability to provide or coordinate essential services in the event of a disaster?

How would relief funds be made available during and immediately following an emergency?

How would victims of exposure be compensated?

To what extent do current liability provisions under Superfund encourage the institution of safety measures?

Are penalties for nonreporting of releases steep enough?

In addition to these response issues, the specter of daily exposure to chemicals emitted as byproducts of chemical processes has been raised by Bhopal. To respond to spills and leaks of chemicals, we need to know where facilities are located, what chemicals they use or produce, and in what volume these chemicals are released on a routine basis.

I intend to introduce amendments to Superfund this year to address some of these issues. It is my hope that Congress will consider my legislation within the context of reauthorization of Superfund.

NEED TO EXPAND SUPERFUND

Mr. President, the long-awaited studies mandated by Superfund were issued in December. They confirm that we cannot afford to delay the expansion and acceleration of the Superfund program. No longer can anyone dispute that the time for study has ended. The major findings of the studies are persuasive. EPA expects that over 2,000 sites will be listed on the National Priority List. Another 22,000 sites are candidates for the NPL. If these sites are added at the current ratio of one to every six, the list may grow to 3,700 to 4,200 sites. These figures could be substantially increased as more active hazardous waste facilities, municipal and industrial landfills, mining waste sites, leaking underground storage tanks and sites contaminated by radioactive wastes and pesticides become eligible for Superfund action. More than half of the 25 most commonly found substances at Superfund sites are known or suspected carcinogens, and substances from over 75 percent of these sites have infiltrated into ground water sources.

It is our responsibility to give EPA the direction and resources to effectively mitigate the dangers these toxics present. There is no question that the job is a very large one, and that significant resources will be needed to make the Superfund an effective program. EPA estimates that the average cost of cleaning up an abandoned waste site is over $8 million. This figure does not take into account inflation, deteriorating conditions at many abandoned waste sites, compensation for damages to natural resources, and, of critical importance to the State of New Jersey, the long-term costs of maintaining cleaned-up sites. The choice made between completely cleaning up sites, or simply containing wastes, will also influence cleanup costs.

Given these assumptions, EPA estimates that the cleanup of the first 1,800 Superfund sites will cost between $11.7 and $22.7 billion. This range reflects the assumption that responsible parties will contribute 50 percent of the cleanup costs in calculating the $11.7 billion figure and 40 percent calculating the $22.7 billion figure. Recovery from responsible parties has been about 25 percent, a much lower figure.

Clearly, the program will have to be funded at a level far higher than the original $1.6 billion. Last year, the Senate Environment and Public Works Committee recommended a funding level of $7.5 billion over the next 5 years. The House of Representatives approved a funding level of $10.2 billion. To adequately fund this vital public health program, the Congress will have to increase Superfund resources significantly. While our bill does not contain a funding title, which will be developed primarily in the Finance Committee, I will support proposals to expand and broaden the existing tax base. Last year, the Environment and Public Works Committee developed information on a number of proposals to spread the tax burden. This was an important effort which should be renewed this year.

Mr. President, it is my hope that we can proceed rapidly with Superfund reauthorization. I applaud Chairman STAFFORD for putting this legislation at the top of our committee's agenda. In my State of New Jersey, not 1 of the 95 sites on the NPL has been completely cleaned up. This is an intolerable situation. I intend to work hard with my colleagues on the Environment and Public Works Committee, and with the Finance Committee, to strengthen this program which is of such critical importance to New Jersey.

There being no objection, the views were ordered to be printed in the RECORD, as follows:

EXHIBIT 1: ADDITIONAL VIEWS OF SENATOR LAUTENBERG ON S. 2892

The chairman and ranking minority member of the committee have exercised vital leadership in securing nearly unanimous committee approval of S. 2892 I hope the Senate will make consideration of this bill a high priority before the 98th Congress adjourns.

The importance of an expanded and accelerated Superfund Program cannot be understated. Citizens who live in continual fear of contaminated ground water, air, and soil from abandoned waste sites deserve to have this program implemented as quickly and effectively as possible. The sheer magnitude of the task, and the need for the Environmental Protection Agency and the States to make managerial and financial commitments without a loss of continuity, requires that the Superfund Program be reauthorized well before it expires in October 1985.

In the interest of assuring timely action on S. 2892, the committee considered a 5-year $7.5 billion reauthorization of current programs. Members of the committee were provided with the opportunity to offer amendments, and several were adopted that will improve the existing Superfund Program. To facilitate committee consideration of S. 2892, however, several important issues were not considered. I hope the Senate will be able to address them when it considers S. 2892.

S. 2892 does not address the pace of the program. Superfund sites are being added to the national priority list at an astounding rate. Currently, there are 546 sites on the NPL. Over the next several years, the Environmental Protection Agency expects the list to grow to 1,400 to 2,200 sites. Every effort should be made to ensure that EPA has adequate resources to initiate cleanups and that it do so as quickly as possible. This may require an increase in funding and direction about the pace at which sites are added to the NPL and the speed with which remedial investigations feasibility studies and remedial actions are undertaken.

Another issue related to the cleanup of sites is the determination of "how clean is clean." The committee gave this issue considerable attention. It resolved that the Agency or State carrying out a remedial action should be provided with flexibility in determining how much should be cleaned up. S. 2892 requires that the degree of clean-up always meets the test of protection of human health and the environment. It is my view that removal of hazardous substances, pollutants, or contaminants should be the preferred method of cleanup unless compelling evidence indicates another solution better serves the public health and environment.

The Superfund Program must be responsive to the citizens that live in the vicinity of an abandoned waste site or site of a release under the act. Citizens should have the opportunity to petition EPA if a release or the threat of a release poses imminent and substantial endangerment to human health or the environment and also to petition EPA to carry out nondiscretionary duties under the act. Citizen suit provisions under other environmental statutes have made programs more responsive to the public and have generally improved Agency regulation and enforcement of such laws.

* * * * * * *

pp. 133- 134

Mr. MITCHELL. Mr. President, I am pleased to consponsor the Superfund Improvement Act of 1985. The bill we introduce today is virtually identical to the legislation approved by the Committee on Environment and Public Works last year.

It is critical that this legislation be enacted into law this year because the authorization for the program expires in September 1985.

There is no environmental problem of more importance to the American people than the thousands of abandoned hazardous waste sites across this country. No area of the United States is immune from the threat of chemical contamination of our air, our water and land. No person is immune from the threat to his or her health and well-being from toxic chemicals in the environment.

It is indeed ironic that this is the legacy of the modern chemical technology which has so improved our standard of living. The Environmental Protection Agency estimates that there could be as many as 22,000 potentially hazardous waste sites in this country.

The Congress acted in 1980 to address this problem by enacting the Superfund law. We enacted a law which was based on the principle that those who are responsible for chemical harm should bear the costs of that harm. This was the basis for both the strict liability standard of the law, and the taxation of chemical feedstocks to fund the cleanup of sites.

Today we are introducing legislation to extend the life of the Superfund law for another 5 years. In the 4 years since we enacted the original statute, we have learned that the magnitude of the problem is far greater than we expected. The $1.6 bill fund authorized in 1980 will probably clean up only 170 of the 546 worst sites now on EPA's priority list. The average cost of cleaning up each site has increased from an estimated $2.5 million in 1980 to $4.5 million in 1983 to $6.5 million in 1984.

We are proposing a modest bill which will permit the continuation of the current program at a slightly increased pace.

EPA officials have stated that the current program—130 site cleanups a year—would cost $5.2 billion over 5 years. This estimate is misleading. It does not include the cost of payment of natural resource claims authorized under the current law. Although claims of $2.7 billion have been filed, none have yet been paid. Moreover, EPA's cost estimate assumes no inflation between 1986 and 1990, and no increase in construction costs at sites. It was these factors in part that led the members of the Environment and Public Works Committee last year to recommend a Superfund Program of $7.5 billion over 5 years.

VICTIM ASSISTANCE

The law now makes no provision for compensation to the human victims of exposure to hazardous chemicals. Compensation is, however, available for damage to natural resources owned by State and Federal authorities. As I have said since 1980, this represents a misguided set of priorities which elevates things over people.

For 4 years, I have been advocating the addition of compensation for injury to persons to the Superfund law, through a combination of judicial and administrative remedies.

It is necessary and justified that each of these avenues provide resource to people injured from exposure to hazardous substances. Together, these kinds of remedies place injury to people on the same footing as damage to property. I am convinced, by the record of the Environment Committee and the general debate over the past years, that a genuine need for this kind of compensation exists. And I am convinced that we, as a society, will provide such compensation in a comprehensive fashion. We will provide it because ultimately, the equity of shifting the burden of harm from the victim to the responsible party will be self-evident and irrefutable.

The bill we introduce today does not contain a detailed recommendation on victim compensation. This should not be construed to mean that we do not intend to address that issue. I will introduce legislation in the near future on that subject, and I intend to offer such a proposal in the Environment Committee this year.

The legislation we adopted last year established a demonstration program of administrative victim assistance in five States to be selected by EPA. I personally believe that such a program could be and should be operated from the human health threat of hazardous substances in the environment. I am therefore at this time reexamining the various suggestions put forth during the Superfund debate last year, with respect to victim assistance. I hope to develop a proposal which is both workable and equitable, and more comprehensive in scope.

Mr. President, this is a modest piece of legislation. It does not expand greatly the regulatory authorities of the current law. It is essentially a reauthorization of the current program. We must move expeditiously to enact it.

* * * * * * *

p. 134

SUPERFUND IMPROVEMENT ACT OF 1985

Mr. HUMPHREY. Mr. President, I am pleased to join Senator STAFFORD and other members of the Committee on Environment and Public Works today as a cosponsor of the Superfund Improvement Act of 1985.

It is particularly significant that this legislation is being introduced on this, the first day of the 99th Congress. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or Superfund, will expire at the end of the present fiscal year. However, the work of the Superfund Program has just begun. Thousands of hazardous waste sites, including many in my State, await action under the program. It is absolutely imperative that the Congress moves quickly to reauthorize this important environmental statute.

We have learned a great deal over the initial years of the Superfund Program. Importantly, we now have a better understanding of the scope of the problem, and it is far larger than originally anticipated. Further, it has become clear that we must devote considerably more resources than we have in the past to the clean up of these sites. Indeed, the Environmental Protection Agency recently told the Congress that their projections for per-site clean-up costs have risen to well over $8 million.

In New Hampshire, where we seem to have more than our share of hazardous waste sites, I have had the opportunity to work closely with local, State, and Federal officials in the cleanup efforts. I have seen first hand that there are many areas where we can improve the program to make it work better and faster.

The Committee on Environment and Public Works spent a great deal of time in the last Congress looking into the scope, problems, and priorities of the program. I believe that the results of the committee's work, which are largely reflected in the bill being introduced today, successfully address needed expansion and improvements to the Superfund Program. I am particularly pleased that the bill as introduced also contains a provision that will provide for a program to increase our understanding of health effects associated with Superfund sites.

Mr. President, it is very important that we move quickly on a Superfund extension. I urge my colleagues to actively support speedy consideration of this legislation.

II

99TH CONGRESS
1ST SESSION

S. 51

To extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. STAFFORD (for himself, Mr. CHAFEE, Mr. DURENBERGER, Mr. HUMPHREY, Mr. HART, Mr. MOYNIHAN, Mr. MITCHELL, Mr. BAUCUS, Mr. LAUTENBERG, and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Superfund Improvement Act of 1985".

TITLE I

INDIAN TRIBES

SEC. 101. (a) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by striking "and" at the end of paragraph (31), striking the period at the end of paragraph (32), and adding a new paragraph as follows:

"(33) 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and";

(2) in paragraph (16) by striking "or" the last time it appears and by inserting before the semicolon at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(b) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".

(c) Section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "or Indian tribe" after the phrase "political subdivision thereof" both times that phrase occurs, and by inserting "or Indian tribe" after the phrase "political subdivision" both times that phrase occurs.

(d) Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) in subsection (a) by inserting "or an Indian tribe" after "State";

(2) in subsection (f) by inserting after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation:"; by inserting "or Indian tribe" after "State" the fourth time that word appears; by adding before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursu-

ant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe"; and by inserting "or the Indian tribe" after "State government";

(3) in subsection (i) by inserting "or Indian tribe" after "State" the first time it appears; and

(4) in subsection (j) by inserting "or Indian tribe" after "State" the first time it appears.

(e) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) in subsection (b) by inserting before the period at the end thereof the following: "", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";

(2) in subsection (c)(2) by inserting "or Indian tribe" after "State";

(3) in subsection (f) by inserting "or Indian tribe" after "State"; and

(4) in subsection (i) by inserting after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".

(f) Section 112(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as rewritten by this Act) is amended by adding before the period at the end of the proviso the following: ", nor against an Indian tribe until the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this subsection".

(g) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new section:

"INDIAN TRIBES

"SEC. 116. The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding cooperation in establishing and maintaining national registries), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).".

COMMUNITY RELOCATION

SEC. 102. (a) The second sentence of paragraph (23) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after "not otherwise provided for," the phrase "costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare," and by striking out the semicolon at the end thereof and inserting in lieu thereof a period and the following: "In the case of a business located in an area of evacuation or relocation, the term may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and thirty days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, it may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974: *Provided*, That the costs of such assistance shall be paid from the Trust Fund;".

(b) Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before "authorized by subsection (b) of this section," the phrase "for permanent relocation or".

ALTERNATIVE WATER SUPPLIES

SEC. 103. Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is amended by striking the period at the end of paragraph (30) and inserting in lieu thereof a semicolon; and by adding after new paragraph (33) the following new paragraph:

> "(34) 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.".

STATE CREDIT

SEC. 104. (a) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "The President shall grant the State a credit against the share" and all that follows down through the end of such section 104(c)(3) and inserting in lieu thereof the following: "In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the President shall grant the State a credit for amounts expended or obligated by such State or by a political subdivision thereof after January 1, 1978, and before December 11, 1980, for any response action costs which are covered by section 111(a) (1) or (2) and which are incurred at a facility or release listed pursuant to section 105(8). Such credit shall have the effect of reducing the amount which the State would otherwise be required to pay in connection with assistance under this section.".

(b)(1) Section 104(d)(1) of the Comprenhensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new sentence: "For the purposes of the last sentence of subsection (c)(3) of this section, the President may enter into a contract or cooperative agreement with a State under this paragaraph under which such State will take response actions in connection with releases listed pursuant to section 105(8)(B), using non-Federal funds for such response actions, in advance of and without any obligation by the President of amounts from the Fund for such response actions.".

(2) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 if further amended by adding the following sentence: "The President shall grant the State a credit against the share of costs for which it is responsible under this paragraph for any reasonable, documented, direct out-of-pocket non-Federal

funds expended or obligated by the State under a contract or cooperative agreement under the last sentence of subsection (d)(1).".

FUNDING OF REMEDIAL ACTION AT FACILITY OWNED BY A STATE OR POLITICAL SUBDIVISION BUT OPERATED PRIVATELY

SEC. 105. Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by amending section 104(c)(3)(C)(ii) to read as follows:

"(ii) 50 per centum (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of the capital, future operation, and future maintenance costs of the response action relating to a release at a facility, primarily used for treatment, storage, or disposal, that was owned and operated by the State or a political subdivision thereof at the time of any disposal of hazardous substances is such facility. For the purpose of subparagraph (c)(ii) of this paragraph, the term 'facility' does not include navigable waters or the beds underlying those waters."; and

(2) by adding at the end thereof the following: "In the case of any State which has paid, at any time after the date of the enactment of the Superfund Improvement Act of 1985, in excess of 10 per centum of the costs of remedial action at a facility owned but not operated by such State or by a political subdivision thereof, the President shall use money in the Fund to provide reimbursement to such State for the amount of such excess.".

SELECTION OF REMEDIAL ACTIONS

Sec. 106. Section 104(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(4)(A) The President shall select appropriate remedial actions determined to be necessary to carry out this section which, to the extent practicable, are in accordance with the national contingency plan and which provide for cost-effective response. In evaluating the cost-effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(B) Remedial actions in which treatment which significantly reduces the volume, toxicity or mobility of the hazardous substances is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action, where practicable treatment technologies are available.

"(C) Remedial actions selected under this paragraph or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants from the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

"(D) No permit shall be required under subtitle C of the Solid Waste Disposal Act for the portion of any removal or remedial action conducted pursuant to this Act entirely onsite: *Provided,* That any onsite treatment, storage, or disposal of hazardous substances, pollutants, or contaminants shall comply with the requirements of subparagraph (C).

"(E) Subject to the requirements of this paragraph, the President shall select the appropriate remedial action which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.".

STATE AND FEDERAL CONTRIBUTIONS TO OPERATION AND MAINTENANCE

SEC. 107. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraphs:

"(5) For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period up to five years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

"(6) During any period after the availability of funds received by the Trust Fund under sections 4611 and 4661 of the Internal Revenue Code of 1954 or section 221(b)(2) of this Act, the Federal share of the payment of costs for operation and maintenance pursuant to paragraph (3)(C)(i) or paragraph (5) of this subsection shall be from funds received by the Trust Fund under section 221(b)(1)(B).".

SITING OF HAZARDOUS WASTE FACILITIES

SEC. 108. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraph:

"(7) Effective four years after the date of enactment of this paragraph, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act with adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the twenty-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed.".

COOPERATIVE AGREEMENTS

SEC. 109. Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking all of the existing paragraph (other than that added by this Act) and substituting the following:

"(d)(1) Where the President determines that a State or political subdivision has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement and combine any existing cooperative agreements with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed from the Fund for the reasonable response costs and related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities authorized by this Act. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.".

HEALTH-RELATED AUTHORITIES

SEC. 110. (a) Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(i)", by redesignating paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E), and by adding the following new paragraphs:

"(2) The Agency for Toxic Substances and Disease Registry shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Environmental

Protection Agency, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

"(3)(A) The Administrator shall perform a health assessment for each release, threatened release or facility on the National Priority List established under section 105. Such health assessment shall be completed not later than two years after the date of enactment of the Superfund Improvement Act of 1985 for each release, threatened release or facility proposed for inclusion on such list prior to such date of enactment or not later than one year after the date of proposal for inclusion on such list for each release, threatened release or facility proposed for inclusion on such list after such date or enactment. The Administrator shall also perform a health assessment for each facility for which one is required under section 3005(j) of the Solid Waste Disposal Act and, upon request of the Administrator of the Environmental Protection Agency or a State, for each facility subject to this Act or subtitle C of the Solid Waste Disposal Act, where there is sufficient data as to what hazardous substances are present in such facility.

"(B) The Administrator may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator providing such information and requesting a health assessment. If such a petition is submitted and the Administrator does not initiate a health assessment, the Administrator shall provide a written explanation of why a health assessment is not appropriate.

"(C) In determining sites at which to conduct health assessments under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subparagraph (E).

"(D) Any State or political subdivision carrying out an assessment shall report the results of the assessment to the Administrator of such Agency, and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of such Agency shall include the same recommendation in a report on the results of any assessment carried out directly by the Agency, and shall issue periodic reports which include the results of all the assessments carried out under this paragraph.

"(E) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

"(F) At the completion of each health assessment the Administrator shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, together with any recommendations for further action under this subsection or otherwise under this Act.

"(G) In any case in which a health assessment performed under this paragraph (including one required by section 3005(j) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such releases.

"(4) Whenever, in the judgment of the Administrator, it is appropriate on the basis of the results of a health assessment, the Administrator shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population. Whenever in the judgment of the Administrator it is appropriate on the basis of the results of such pilot study, the Administrator shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects for the population exposed to hazardous substances in a release or suspected release.

"(5) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

"(6) The Administrator shall conduct a study, and report to the Congress within two years after the date of enactment of the Superfund Improvement Act of 1985, on the usefulness, costs, and potential implications of medical surveillance programs as a part of the health studies authorized by this section. Such study shall include, at a minimum, programs which identify diseases for which an exposed population is at excess risk, provide periodic medical testing to screen for such diseases in subgroups of the exposed population at highest risk, and provide for a mechanism to refer for treatment individuals who are diagnosed as having such diseases.

"(7) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

"(1) provision of alternative water supplies, and

"(2) permanent or temporarily relocation of individuals.

"(8) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President or the Administrator of the Environmental Protection Agency to exercise any authority vested in the President or such Administrator under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

"(9)(A) The Administrator shall, within six months after the date of enactment of the Superfund Improvement Act of 1985, prepare a list of at least one hundred hazardous substances which the Administrator, in his sole discretion, determines are those posing the most significant potential threat to human health due to their common presence at the location of responses under section 104 or at facilities on the National Priority List or in releases to which a response under section 104 is under consideration. Within twenty-four months after enactment, the Administrator shall prepare a list of an additional one hundred or more such hazardous substances. The Administrator shall not less often than once every year thereafter add to such list other substances which are frequently so found or otherwise pose a potentially significant threat to human health by reason of their physical, chemical, or biological nature.

"(B) For each such hazardous substance listed pursuant to subparagraph (A), the Administrator shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Such program shall include, but not be limited to—

"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

"(iv) where there is a possibility of obtaining human data, the collection of such information.

"(C) In assessing the need to perform laboratory and other studies, as required by subparagraph (B), the Administrator shall consider—

"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by subparagraph (F) of this paragraph; and

"(iii) such other scientific and technical factors as the Administrator may determine are necessary for the effective implementation of this subsection.

"(D) In the development and implementation of any research program under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(E) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Where this is not practical, the costs of such research programs should be borne by parties responsible for the release of the hazardous substance in question. To carry out such intention, the costs of conducting such a research program under this paragraph shall be deemed a cost of response for the purposes of recovery under section 107 of such costs from a party responsible for a release of such hazardous substance.

"(F) Based on all available information, including data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator shall prepare toxicological profiles sufficient to establish the likely effect on human health of each of the substances listed pursuant to subparagraph (A). Such profiles shall be revised and republished as necessary, but no less often than once every five years. Such profiles shall be provided to the States and made available to other interested parties.

"(10) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry.

"(11) In the implementation of this subsection and other health-related authorities of this Act, the Administrator is authorized to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to toxic substances, through such means as the Administrator deems appropriate. Not later than one year after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall report to the Congress on the implementation of this paragraph.

"(12) For the purpose of implementing this subsection and other health-related authorities of this Act, the President shall provide adequate personnel to the Agency for Toxic Substances and Disease Registry, which shall be no fewer than one hundred full time equivalent employees.

"(13) The activities described in this subsection and section 111(c)(4) shall be carried out by the Agency for Toxic Substances and Disease Registry established by paragraph (1), either directly, or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of such Agency determines are capable of carrying out such activities. Such activities shall include the provision of consultations on health information, and the conduct of health assessments, including those required under section 3005(j) of the Solid Waste Disposal Act, health studies and registries.".

(b) Section 111(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by inserting "in accordance with subsection (n) of this section and section 104(i)," after "(4)"; and

(2) by striking "epidemiologic studies" and inserting in lieu thereof "epidemiologic and laboratory studies and health assessments".

(c) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(n) For fiscal year 1985, not less than $18,000,000 and, for each fiscal year thereafter, not less than 5 per centum of all sums appropriated from the Trust Fund or $50,000,000, whichever is less, shall be directly available to the Agency for Toxic Substances and Disease Registry and used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i), including any such activities related to hazardous waste stored, treated, or disposed of at a facility having a permit under section 3025 of the Solid Waste Disposal Act. Any funds so made available which are not obligated by the beginning of the fourth quarter of the fiscal year in which made available shall be made available in the Trust Fund for other purposes.".

(d) Section 3005 of the Solid Waste Disposal Act is amended by adding the following new subsection:

"(j) EXPOSURE INFORMATION AND HEALTH ASSESSMENTS.—(1) Beginning on the date nine months after the enactment of the Solid Waste Disposal Act Amendments of 1984, each completed application for a permit under subsection (c) for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address—

"(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

"(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under subparagraph (A); and

"(C) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which a completed application for a permit under subsection (c) has been submitted prior to such date shall submit the information required by this paragraph to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after such date of enactment.

"(2) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by paragraph (1), together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Whenever in the judgment of the Administrator of such Agency, the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator of the Agency for Toxic Substances and Disease Registry shall conduct a health assessment in connection with such facility in accordance with section 104(i)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and take other appropriate action with respect to such risks as authorized by section 104 (b) and (i) of such Act.

"(3) Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks of health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Diseases Registry, the Administrator, or the State (in the case of a State with an authorized program).".

(e) Section 104(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—

(1) striking "the Surgeon General of the United States" and inserting in lieu thereof "the Secretary of Health and Human Services";

(2) inserting in the second sentence thereof after "of said Agency" the following: "(hereinafter in this subsection referred to as 'the Administrator')";

(3) striking "chromosomal testing" in subparagraph (D) and inserting in lieu thereof "appropriate testing".

PUBLIC PARTICIPATION

SEC. 111. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(j) Before selection of appropriate remedial action to be undertaken by the United States or a State or before entering into a covenant not to sue or to forebear from suit or otherwise settle or dispose of a claim arising under this Act, notice of such proposed action and an opportunity for a public meeting in the affected area, as well as a reasonable opportunity to comment, shall be afforded to the public prior to final adoption or entry. Notice shall be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposal and alternative proposals considered.".

LOVE CANAL PROPERTY ACQUISITION

SEC. 112. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection as follows:

"(k) In determining priorities among releases and threatened releases under the National Contingency Plan and in carrying out remedial action under this section, the Administrator shall establish a high priority for the acquisition of all properties (including nonowner occupied residential, commerical, public, religious, and vacant properties) in the area in which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner occupied residences have been acquired pursuant to such determination.".

NATIONAL CONTINGENCY PLAN—HAZARD RANKING SYSTEM

SEC. 113. Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(a)" immedately following "105." and by adding the following at the end thereof:

"(b) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Improvement Act of 1985 relating to the selection of remedial action.

"(c) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985 and such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue to full force and effect.".

STATE AND LOCAL GOVERNMENT LIABILITY

SEC. 114. Section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(d)" and adding the following new language:

"(2) No State or local government shall be liable under this title for costs or damages as a result of nonnegligent actions taken in response to an emergency created by the release of a hazardous substance, pollutant, or contaminant generated by or from a facility owned by another person.".

CONTRACTOR INDEMNIFICATION

SEC. 115. Section 107(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after paragraph (1) the following new paragraph and redesignating the succeeding paragraph accordingly:

"(2) The Administrator may, in contracting or arranging for response action to be undertaken under this Act, agree to hold harmless and indemnify a contracting party against claims, including the expenses of litigation or settlement, by third persons for death, bodily injury or loss of or damage to property arising out of performance of a cleanup agreement to the extent that such claim does not arise out of the negligence of the contracting party.".

DIRECT ACTION

SEC. 116. (a) Section 108 (c) and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended to read as follows:

"(c) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

"(d) The total liability under this Act of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Act: *Provided*, That nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim: *Provided further,* That nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under section 107 or 111 of this Act or other applicable law.".

(b) Section 108(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

VICTIM ASSISTANCE PROGRAM

SEC. 117.

FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES

SEC. 118. Section 111(e)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before the period a colon and the following: "*Provided,* That money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.".

STATUTE OF LIMITATIONS

SEC. 119. Section 112(d) of the Comprehenisve Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(d) No claim may be presented, nor may any action be commenced, under this title—

"(1) for the costs of response, unless that claim is presented or action commenced within three years after the date of completion of the response action;

"(2) for damages under subparagraph (C) of section 107(a), unless that claim is presented or action commenced within three years after the date on which final regulations are promulgated under section 301(c) or within three years after the date of the discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later; or

"(3) for any other damages, unless that claim is presented or action commenced within three years after the date of the discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained in this paragraph shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him. No claim may be presented or action be commenced under this paragraph for any damages if, prior to the date of enactment of the Superfund Improvement Act 1985, the statute of limitations which would otherwise apply under this paragraph has expired.".

JUDICIAL REVIEW

"SEC. 120. Section 113(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"Sec. 113. (a)(1) Review of any regulation promulgated under this Act may be had upon application by any interested person in the Circuit Court of Appeals of the United States for the District of Columbia or in any United States court of appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation. Any such application shall be made within one hundred and twenty days from the date of promulgation of such regulation, or after such date only if such application is based solely on grounds which arose after such one hundred and twentieth day. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

"(2)(A) If applications for review of the same agency action have been filed in two or more United States courts of appeals and the Administrator has received written notice of the filing of the first such application more than thirty days before receiving written notice of the filing of the second application, then the record shall be filed in that court in which the first application was filed. If applications for review of the same agency action have been filed in two or more United States courts of appeals and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States courts that applications have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the Administrator, the Administrative Office thereupon shall select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the United States court of appeals which remanded such action.

"(B) Where applications have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

"(C) Any court in which an application with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such application to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.".

CLARIFICATION OF PREEMPTION LANGUAGE

SEC. 121. Section 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after the first sentence thereof the following: "Nothing in this section shall preclude any State from requiring any person to contribute to a fund to pay (1) the costs of the non-Federal share or other State responsibilities under section 104(c)(3), or (2) the direct and indirect costs of response actions at facilities or locations where the President has not responded under this Act or in addition to response actions taken under this Act, or, (3) any other management, enforcement, or administration activities related to response actions or other cleanup of hazardous substances or hazardous wastes.".

FEDERAL FACILITIES

SEC. 122. Section 115 of the Comprehensive Environmental, Compensation, and Liability Act of 1980 is amended by inserting before the period at the end thereof a colon and the following: "*Provided,* That with respect to a Federal facility or activity for which such duties or powers are delegated to an officer, employee or representative of the department, agency or instrumentality which owns or operates such facility or conducts such activity, the concurrence of the Administrator (and the responsible State official where a cooperative agreement has been entered into) shall be required for the selection of appropriate remedial action and the administrative order authorities of section 106(a) are hereby delegated to the Administrator".

ADMINISTRATIVE CONFERENCE RECOMMENDATION

SEC. 123. The Congress finds that recommendation 84-4 of the Administrative Conference of the United States (adopted June 29, 1984), is generally consistent with the goals and purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and that the Administrator should consider such recommendation and implement it to the extent that the Administrator determines that such implementation will expedite the cleanup of hazardous substances which have been released into the environment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 124. (a) Section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "as provided in this section" in subsection (a); striking paragraphs (2) and (3) of subsection (b); and by striking subsection (c).

(b) Section 303 of the Comprehensive Environmental Compensation and Liability Act of 1980 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 303. (a) There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Emergency Response Fund for fiscal year—

"(A) 1981, $44,000,000,
"(B) 1982, $44,000,000,
"(C) 1983, $44,000,000,
"(D) 1984, $44,000,000,
"(E) 1985, $44,000,000,
"(F) 1986, $206,000,000,
"(G) 1987, $206,000,000,
"(H) 1988, $206,000,000,
"(I) 1989, $206,000,000, and
"(J) 1990, $206,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A) through (I) as has not been appropriated before the beginning of the fiscal year involved.".

"(b) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

"(1) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

"(2) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

"(C) EXPENDITURES FROM RESPONSE TRUST FUND.—

"(1) In general.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof of this Act, as in effect on the date of the enactment of the Superfund Improvement Act of 1985, including—

"(A) response costs,

"(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

"(C) claims for injury to, or destruction or loss of, natural resources, and

"(D) related costs described in section 111(c) of this Act.

"(2) Limitations on expenditures.—At least 85 per centum of the amounts appropriated to the Response Trust Fund shall be reserved—

"(A) for the purposes specifed in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

"(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

ADMINISTRATION TESTIMONY

SUPERFUND IMPROVEMENT ACT OF 1985

MONDAY, FEBRUARY 25, 1985

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:08 a.m., in room SD-406, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Simpson, Symms, Domenici, Durenberger, Bentsen, Mitchell, and Baucus.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator **STAFFORD**. Good morning.

The Committee on Environment and Public Works will please come to order. We welcome you all here. We regret the fact that our room is not larger.

Today's hearing is on the proposed extension of Superfund, more formally known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Our only scheduled witness is Lee Thomas, Administrator of the U.S. Environmental Protection Agency. I want to welcome you, Mr. Thomas, along with the members of your staff and any other administration officials who are here with you.

Mr. Thomas has advised me he is prepared to testify and will testify on the two major proposals before the committee. They include the administration bill which I have introduced by request and also S. 51, the Superfund extension bill I introduced earlier this year on behalf of myself and eight other members of the committee.

S. 51 is a bill that combines the language of the legislation approved by this committee last year by a vote of 17 to 1 and some other Superfund amendments approved by the full Senate last year by a vote of 93 to 0.

The administration's bill was made available to the Congress and to the public last Friday and copies of it were made available to members of this committee then. It is our understanding that the bill is based on information contained in the studies required by section 301 of the existing Superfund law. Those studies have been available to the committee and its staff since December, so their content is familiar. However, I expect Mr. Thomas may wish to discuss some of the specifics involved.

It is the hope of the chairman that the committee will be able to stick to its schedule on Superfund that was announced 2 months ago, that is, we will complete our hearing today and begin markup tomorrow, continuing Thursday and Friday with the goal of reporting the bill by March 1, and the end of this week.

I realize this is an ambitious schedule and, as always, the chairman very obviously will be governed by the wishes of a majority of the members of this committee. I would observe, however, that the committee began work on this reauthorization almost exactly 1 year ago. Our first hearings were held 11 months ago, and last year's bill, S. 2892, was marked up and ordered reported 5 months ago.

There is little that is new before us. The committee bill is well known to everyone and the administration's views are also well known to all. The administration's views have been able presented in testimony and commentary given to us by Mr. Thomas and his staff.

The section 301 reports, which are the basis of both S. 51 and of the administration proposal, were formally provided to the committee almost 3 months ago. Informally, their content had been provided to the committee and its staff almost 6 months ago. That was the testimony of Mr. Thomas before the Senate Finance Committee last year, and I say presented to us because our committee, except for three members who have left, is the same committee that worked on this bill last year and there are no new members on the committee.

Our target of reaching a decision by the end of this week, it seems to me, is neither overly ambitious nor unrealistic. It will be the conclusion of a process that began a year ago and, of course, it is necessary for us to act without delay if we are to enact new legislation by September 30 of this year when the current Superfund bill expires.

I have discussed this schedule with Mr. Thomas and, as always, he has promised his help and cooperation. He will be unable to be with us tomorrow because of a previous commitment, but he and members of his staff will be with us during our markups on Thursday and Friday. On those days, I expect we will continue our committee practice that has given Mr. Thomas the freedom to provide us with any technical assistance we need during markup and also with the freedom he has excercised in the past to provide us with his comments and policy views and those of the administration. In the event that we cover any ground on Tuesday in this absence that he considers merits comment, we can expect to hear that comment on Thursday or Friday.

All of which is by way of saying that I anticipate that we can stick to our schedule and still provide a thorough airing of the subject matter from all viewpoints.

We have only 7 months until the expiration of Superfund. And, of course, whatever legislation this committee recommends will have to go to the Senate Finance Committee for consideration of the revenue raising components. Our experience of last year has demonstrated that that is no simple task. Then the bill will have to go before the full Senate for decision and then to a committee of conference, so we can ill afford any delay.

That is not to say that I expect this committee's work on this subject to be completed on Friday. We will probably still have to visit one or two issues, particularly those dealing with insurance.

However, those issues are not ripe for solution at the present time. The insurance industry, I might say, is not sure what sort of help, if any, they need. Nor are they so central to Superfund that they should be permitted to hold up action on this reauthorization. I would expect we would be ready to deal with those issues during March so that whatever solutions we reach can be joined with the bill before it is taken up on the floor of the Senate. I am confident we can work out such an arrangement.

Before I close, let me say that I believe that last year's bill was a good bill and one that was arrived at in the best tradition of this committee. Not all the members of this committee were totally pleased with all of the bill. For some members, the bill does not go far enough. For others, of course, it goes too far. But all of the members of this committee received a full and fair hearing on their views. It is a way this committee has done its business on important and controversial matters since I have been a member, and I am proud of that process and of the conduct of the members of this committee in supporting the final product.

Last year's bill, reintroduced this year as S. 51, had broad support at the end of the process. The vote was 17 to 1 in favor of recommending the bill to the Senate. As I pointed out, all 15 members of the current committee were members of the committee last year, and 14 of those members voted for the bill.

By sticking close to the central and important features of this bill, it is the hope of this Senator that we can continue to hold the consensus that carried us so close to Senate action last year.

It is my view that the committee would be wise to continue to give its support to the bill that was forged in the crucible of our committee debate last year. The bill has neither the scope nor the funding resources this Senator would prefer to see, but I shall defend the committee's provisions during these markups against efforts to increase or decrease either. I hope other members will agree that it is the best course of action at this time and under the circumstances in which we now find ourselves.

Senator Bentsen, do you have an opening statement?

Senator BENTSEN. Yes, I do. Thank you very much, Mr. Chairman.

OPENING STATEMENT OF HON. LLOYD BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. Mr. Chairman, I think it is unfortunate, I think more than that, I think it is tragic that society has allowed conditions to deteriorate in our country to the extent to where we now need a Superfund. Although it is too late for many of the innocent victims, a resolution to the problem caused by thousands of dangerous waste sites is now a great national priority.

There are few people that would argue against the reauthorization of the Superfund law, and most of us are certainly in agreement that a much larger fund is necessary to accomplish the job. But after that the consensus begins to fall apart.

In Demcember of 1984, an EPA report estimated that cleaning up 1,500 to 2,000 sites would cost $11.7 billion. Administrator Thomas has said that between $800 million and $1.2 billion per year is about the most that the program could absorb without wasting funds.

The House last year passed legislation which would have raised $10.2 billion for fiscal years 1986 through 1990. The Federal contribution from the General Treasury would have amounted to $2.3 billion, and taxes on petroleum and chemical feedstocks would have provided $7.9 billion. The 5-year, $7.5 billion Senate Superfund reauthorization bill was reported from this committee and then went to the Finance Committee, and it died. But you have to remember that that happened in the last weeks of the session.

You also have to look at the membership of this committee and the membership of the Finance Committee, and you will find quite a number of the members of this committee are on the Finance Committee and who have a very active interest in seeing that we accomplish what has to be done on their part of the jurisdiction.

My point is that we all know that the fund must be and will be expanded, but as more revenues are required, they must be raised with a full recognition that a more equitable revenue base is necessary. I am pleased that the administration has presented formal Superfund legislation. Like most other members, there are portions of it with which I agree and there are others that I am going to question and try to find out how you arrived at that point of view. Most notably, I question some of the tax consequences and the proposal they are in.

Mr. Chairman, when the current law was in its infancy, the revenues it required could be collected without significant side effects. At this time, however, the narrowly drawn feedstock tax places an unfair economic burden on certain chemicals and areas of our national economy.

For example, there are estimates that 50 percent of the petrochemical feedstock portion of the tax is raised from plants in Texas. This industry has experienced some very severe economic difficulties over the past several yers. Some of the highest unemployment figures in Texas are registered where there is the highest petrochemical concentration.

I fully expect that the domestic petrochemical industry will be faced with significant economic problems during at least this next decade. Many of these problems will come from production of petrochemicals in foreign countries, particularly Saudi Arabia, Kuwait, Canada, and Mexico. It is not to the benefit of any area of our Nation for us to encourage the production of these chemicals outside of the United States, a result that reduces both jobs and revenues, but that is the effect of the current system that we have.

We must also consider the waste end tax. Senator Moynihan and I have been working on such a proposal which we project will raise about $300 million a year. So. obviously, we must also look to a broader based source of funds if we are to meet this Nation's important Superfund goals.

For all of these reasons, I had looked forward to a strong, commonsense approach from the EPA. From my preliminary understanding of the administration proposal, I think the administration had appropriately frozen the feedstock tax at its current levels. This minimizes the potential for damage that this tax presents.

Beyond that, however, I am concerned over the proposals. The EPA proposes to raise $600 million from the waste end tax, twice the amount Senator Moynihan and I found feasible. I am going to be very interested in seeing the details on how this can be collected without adversely altering the disposal and treatment of waste or creating economic hardships that discourage domestic production of certain products.

While the administration has made some progress toward identifying alternatives for the revenue needed for the Superfund, I am disappointed that the proposal fails to include a broader based revenue source that is both necessary and fair. That means it will be up to the Congress to take the lead in that regard and, finally, it will be the Finance Committee.

What we do in this committee with the kind of background and expertise that this committee and its staff has will have a very substantial influence on what the Finance Committee has to do. Hopefully, we can do more than what I think is, at the present, a very lackluster proposal.

Thank you very much, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Bentsen.

Senator Mitchell, do you have an opening statement?

Senator MITCHELL. I do, just a brief statement, Mr. Chairman. Thank you.

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. I commend you, Mr. Chairman, for expeditiously scheduling this committee's activities on the reauthorization of the Superfund law. Prompt action is necessary if we are to complete work on this legislation this year without any disruption in the program.

The bill we will consider tomorrow at the markup would reauthorize the Superfund law at a level of $7.5 billion over 5 years. It is clear that even this increased funding will not complete the task before us.

Since the Superfund law was first enacted in 1980, EPA has undertaken a comprehensive inventory of hazardous waste sites across the country. It is now estimated that there are up to 22,000 potentially hazardous waste sites in the United States.

If EPA's current Superfund level of activity is to be continued, long-term cleanup can be started at approximately 115 sites each year. Even continuation at this pace requires the kind of funding increase approved by this committee last year.

In preparation for our decisions this week will receive recommendations today from the administration on its view of the Superfund program and its future. I look forward to hearing from Mr. Thomas whom we have all come to respect so much. I know that all members of the committee will consider carefully the administration's recommendations.

Ultimately, we will have to make a determination as to the scope of the program and the pace of the cleanup activity over the next 5 years. We will have to balance the administration's proposals against the clearly unmet needs in this area all across the country.

That will not be an easy task. We must keep in mind throughout this debate that we represent all Americans, because all Americans are affected by this crisis and by the decisions we make to deal with it.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you very much, Senator Mitchell.

Senator Domenici?

OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. Mr. Chairman, first, I, too, commend you for expediting the process. I said 3 or 4 weeks ago that I was for this and, obviously, I commend you. I have a couple of concerns.

I have been told everywhere that I turn, that in terms of trying to reduce the deficit, a tax is a tax is a tax. No matter what you talk about, taxes are allegedly off limits. I am not suggesting that I agree with that 100 percent, but I do believe that there is some kind of concern around here that we not distort what is already a very difficult and fragile American economy.

I don't think there is any difference in taxing, at a very high rate, certain specific industries versus any other tax. So, my concern will be to join with the chairman in trying to get a bill, but equally I have a concern that we not pass a bill assuming that the General Treasury is going to come up with a substantial portion of the payment because if we start that, I can tell you we can find reasons to justify additional taxes.

I am hopeful that there will be some serious consultation with the Ways and Means Committee and Finance Committee so that we don't wash our hands of this by passing a bill that can't be funded. I don't know what that is yet, but clearly that is an important consideration.

Second, I think we ought to try to produce a bill that can become law. I think that is the final test here. I am sure the President, if the Administration has followed up on what he told us a few weeks ago, Mr. Chairman, he is presenting something that the President will sign. I don't know whether he is prepared to tell us that if we change it in any respect it won't be signed, but I think the chairman has expressed to me a willingness to work with the White House on the basis that he wants a bill the President can sign.

I don't think there is any doubt that we don't want to waste our time, and I don't think there is any doubt that the President is pretty serious about his ideas that he doesn't want any new taxes at this point and that we won't sign a bill that expects more than we can really accomplish.

I have some interests much like the Senator from Texas. I share his concern as to who we impose the tax on. I think it is a very difficult situation in the petrochemical industry. I don't have them, Senator, as you do, but we do provide some of the basic materials that go to the petrochemical industry. I would just say I, too, have an interest in seeing that we don't tax domestic industries and leave foreign ones exempt where they are already more than competitive and where we are losing our industries. I cite that only because copper does concern me. We have never considered copper to be taxable, but the House has. I an not going to burden the committee now with the rationale on why that would be absolutely counterproductive. That isn't my primary concern at this point.

Frankly, I believe we can pass a bill that will get on with some significant cleanup. Whether we can do everything that everybody can imaging we ought to do, I don't know. It seems to me we can't, but I will cooperate as much as I can.

Thank you, Mr. Chairman.

Senator **Stafford**. Thank you, Senator Domenici.

Senator Durenberger?

OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator **Durenberger**. Mr. Chairman, I had the opportunity, as did other members of the committee, over the weekend to review the administration's bill. It is not a bombshell. There are many sections of the legislation which could be supported by everyone on this committee. Many sections are coincident with the bill that we reported out last year from the committee. Many sections would provide programmatic improvements over existing law.

However, if it is not a bombshell—I see our colleague from the House, Jim Florio, here—it is also not a valentine's day present to the Superfund program either. As I read the bill, I had the feeling that maybe the administration wants to pull back, that maybe it wants to make Superfund a subtitle of RCRA which most certainly was not the intent of Congress when Superfund was adopted in 1980. Despite its common name, Superfund is more than a tax to clean up dumps.

The bill I saw was disappointing in three respects in particular. I will be brief.

First, it attempts to deauthorize many of the activities which are authorized under current law. Some may think that CERCLA is not the appropriate authority to use on asbestos in schools or acid rain, but most are surprised, I am sure, by the suggestion we should have to prove a linkage between a hazardous waste facility and a threat to public health or the environment before the fund can be used in response.

For instance, in Minnesota, at a site called New Brighton, we have drinking water contaminated by the industrial solvent TCE. It appears that the likely source of the contamination was hazardous waste disposal site at the nearby Army munitions facility.

At another Minnesota city, Long Prairie, we again have contaminated drinking water, again by TCE, but the most likely source is septic tanks. In California, in the Silicon Valley, the drinking water of 400,000 people was contaminated again by TCE, but this time the release was from underground storage tanks.

What is interesting about all three of those sites, all presenting a threat to human health in the same way, all resulting from contamination by the same chemical, TCE, is that under the administration's proposed Superfund Program, a response would only be authorized at the New Brighton site and then only if this Senator and whoever else he can marshall can go to war with the U.S. Army and get them to agree that their disposal site caused the contamination which, in 10 years, they have been unwilling to do. So, if I am wrong in that reading of the bill, I would hope, Lee, that you can educate me during the course of your testimony.

The second disappointment came when I read that the administration is proposing a $600 million waste end tax. When I saw the President's budget earlier this month and his proposal that Superfund be authorized at $5.3 billion over the next 5 years, I was pleased. Now I find that the administration does not appear to have that intention.

The feedstock tax, a reliable and stable source of revenue, is not slated for increase. The bill holds general revenues out of the fund altogether, if I read it correctly. So, if the waste end tax does not work, and we sure don't know that it will, Superfund may actually have fewer resources than it does under current law. That bothers me.

Finally, I was disappointed by the projection which indicates almost no recovery from responsible parties. Under the administration's budget, only $100 million per year is projected for revenue from interest on the fund and recoveries of cost from responsible parties. That certainly does not reflect aggressive enforcement, although watching the Agency at work, I find them fairly aggressive.

That means that much less than 10 percent of Federal costs will be recovered, and that is just not tough enough for me.

So, Mr. Chairman, I, like others, want to commend you for putting us on a quick Superfund schedule. I can't find anything novel in the bill that would cause us to slow down this process much. I will vote against any amendments that will reduce the scope of existing law. I agree with my colleague from Texas that this committee plays a very important role, and even though we are both on the Finance Committee, I am not anxious to see us forgo our role and pick it up again with a different set of hats on, although when it does come to the Finance Committee, I intend to support amendments that will strengthen the program by putting the tax on a more stable basis than it is on today.

Thank you.

Senator Stafford. Thank you very much, Senator Durenberger.

The Chair wants to note that a very able Member of Congress who is chairman of one of the House committees that will be concerned with this question is here with us observing the comments and will be observing the statements by Administrator Florio, we are very happy you are here with us. This will give you some sense of the difficulties that we are facing over here as we work together to try to get a bill this year.

I think once we have completed the work on this bill, your chairman would, if it seems appropriate, consider a hearing later on with respect to the possibilities and the questions of different tax options that might be available to us and to us through the appropriate committees that will consider the tax matters.

Having said that, I think, Mr. Thomas, we are ready for your statement and discussions.

The Chair would like to make one additional comment and, unfortunately, some of the members who are involved are not here and some of the staff who were involved are not here. The Chair wants to express his appreciation. Last Saturday afternoon, things were in too much of a hurry to be able to have time to do it, but the Chair wants to express his appreciation to the members of this committee and to the staff who made it possible for the very expeditious way we were able to pass a very important bill, the interstate cost estimate and substitute interstate cost estimate, Saturday afternoon on a rollcall vote on which there was no vote against the bill. It took a lot of hard work by staff and by the committee members behind the scenes on a bipartisan basis to get it done. Doing it that way, of course, we don't cause the controversy that makes us news, but we do get things done in this committee, and the chairman is very proud to be a part of the committee and its chairman when we are able to do things in that way.

So, I thank every member of the committee and every member of our staff who did the hard spade work that made it possible.

Now, Mr. Thomas, we would be glad to hear from you.

STATEMENT OF LEE M. THOMAS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY RICHARD K. WILLARD, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE; LINDA FISHER, EXECUTIVE ASSISTANT TO THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY; HENRY HABICHT, ASSISTANT ATTORNEY GENERAL, LANDS AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE; MIKE ROLLISON, COUNSEL FOR TAX POLICY, DEPARTMENT OF THE TREASURY; AND LINDA CARLISLE, TAX POLICY DIVISION, DEPARTMENT OF THE TREASURY

Mr. THOMAS. Thank you, Mr. Chairman.

Let me introduce the other people with me at the table this morning. In order to be as responsive as possible to the questions of the committee, I thought it would be advisable if other representatives of the administration with particular interest and expertise in areas associated with Superfund joined me.

On my far right is the Acting Assistant Attorney General for the Civil Division, Rich Willard. Next to me is Ms. Linda Fisher, who is my executive assistant and for the last year has chaired our Superfund reauthorization task group. Immediately on my left is Hank Habicht, who is Assistant Attorney General for the Lands and Natural Resources Division. Next to him is Mike Rollison, who is Counsel for Tax Policy at the Department of Tresury. Next to him is Linda Carlisle, who is also with the Department of Treasury in the Tax Policy Division.

Mr. Chairman, I have a written statement which I have provided to the committee. I would like, however, to summarize and highlight that statement in my opening comments.

Senator STAFFORD. That would be agreeable to the committee. The committee, if there is no objection, would place your entire statement in the record.

Mr. THOMAS. Thank you, sir.

The process that we have used for making recommendations concerning reauthorization of Superfund is consistent with a process that I discussed with this committee last year on several occasions, as you indicated. We began a review of the experience we had had with implementation of the current authorities with Superfund, both within EPA as well as within the other executive branch agencies and State agencies that have been responsible for carrying that program out.

Additionally, as you know, we completed a number of studies which had been called for in the original statute and provided those to Congress. Finally, we went through an extensive process of reviewing recommended proposals with other executive branch agencies. Finally, there was a series of recommendations which I made to the President and Vice President in a lengthy session with them several weeks ago.

The end result of that process is the proposal, which you most graciously introduced, that the President submitted both to the Senate and to the House last week. It is that proposal I would like to walk through with you today. In that regard, I hope to clear up issues that you have. For instance, each of the issues that Senator Durenberger mentioned, I think, involves a different reading of the law than we have.

So, with that, let me talk about the administration's bill.

First, it triples the response resources available for dealing with this massive problem in this country. It proposes $5.3 billion in tax revenue that would be available for implementing this program. Additionally, it proposes an expanded enforcement program that we project would avail us of about $2 billion in private party cleanup during that same 5-year period of time, for a total cleanup effort under the Superfund Program of approximately $7.5 billion.

Second, it makes a series of proposals for focusing the program on hazardous substance sites. I will talk to each of these points in some detail. This one, particularly, I think, is more prospective than it is retrospective if you look back at the sites we have dealt with to date, particularly those on the National Priority List. I will explain to you that those proposals largely leave intact our ability to deal with those sites. So, it is looking ahead and trying to ensure that our focus is on hazardous substance sites.

Third, it expands our emergency cleanup authority. This is a particularly relevant section of the bill, we feel, in that we think that has been a very effective part of the program, particularly the aggressive way we have used it in the last couple of years. I will talk about that in a little more detail later.

It promotes permanent cleanup solutions. One of the things that we have found, particularly over the last 2 years as we have worked not only with this program but the difficulties of the RCRA Program, we would like to have more specificity in the law promoting permanent cleanup solutions for guidance to us in selecting remedies.

It establishes benchmark cleanup standards. We think it is important that in the statute standards and the process be established. We have incorporated into our proposal the policy which we adopted in our national contingency plan revision, which is basically the how-clean-is-clean issue, incorporating benchmark standards and specificity in the statute on that.

Next, it guarantees community involvement in our decisions about our policy. We have involved the community in that decisionmaking process by a policy that I established about 18 months ago.

We have incorporated into the statute specific language that would guarantee that kind of participation.

Finally, it ensures an adequate, stable, and fair financial base. I will get into detail with the Treasury Department in discussing that financing proposal with you.

Before I get into the specifics, let me just bring you up to date quickly on where we are in dealing with the hazardous waste problem.

These two graphs in each category show where we were December 31, 1984, and where we will be at the end of this fiscal year. First, with our inventory of sites, how many sites are in that inventory that we need to assess. This work is largely done by the States and our regional offices.

We have almost 20,000 sites. We are continuing to update that inventory at a much slower pace than when we established it, but we are continuing to get sites incorporated into that inventory.

From the inventory, we move for a site assessment. We actually began that site assessment process much more aggressively last year than in the past because we had a grant authority enacted by you in our appropriation bill so that we could have the States much more fully involved in site assessment. By the end of this year, we project we will have assessed over 16,000 sites, that is, a review of the site to determine in fact whether it is a site that warrants field investigation.

To date, we have completed over 4,000 of those field investigations with another 1,000 to go this year. Most of those field investigations are done by our field investigation teams out of each of our 10 regional offices. They include an on-site assessment, samples analysis, and a determination of the extent of the problem at the site.

As you know, we respond with one of two authorities, either our emergency authority if there is a threat or a potential threat to human health or the environment, or our long-term authority if we place the site on the National Priority List. We currently have 786 sites, both final and proposed, on our national priority list, and we project that list may grow to as high as 2,000 sites.

Now, let's look specifically at where we are with site activity, again using the same dates, where we were at January 1, where we project we will be at the end of this fiscal year. Emergency cleanups, part of our program that we are moving, we think, very aggressively, are running at nearly 200 a year. That is individual sites. It was about 460 January 1, and we are looking for almost 650 by the end of this fiscal year. By the way, we make proposals—later on I will discuss them with you—for expanding our cleanup authority there.

Second, then, our big sites, the large sites that are on the national priority list—where do we stand with moving forward with those? The first phase, as you know, is our detailed engineering studies; it generally takes 18 months to 2 years to fully define the full extent of the program at the site and fully define how we are going to clean it up. By the end of this year, we are projecting that nearly 500 priority sites will have those engineering studies either underway or completed.

We will be in the construction phase, which means we have finished the design of the remedy and have actually begun construction, at a projected 163 sites. The construction will either be finished, will be in monitoring, or will be in the construction phase.

So, the total number of sites, hazardous waste sites, where we actually had activity, either the emergency program or the remedial long-term program, was 753 sites at January 1. By the end of this year, we project 1,073 sites with site activity either completed or underway.

Now, specifically, the National Priority List, the 786 sites we are working hard to increase: We have our update process that goes on periodically. As a matter of fact, it will probably be more frequently this year than in the past in that one of the things you asked us to do, very appropriately, when you passed the first law, was to fully inventory the extent of the problem and determine whether there is an emergency situation or whether it is a long-term chronic situation.

As you can see, the engineering studies, the first phase, are moving up rapidly; we are showing 448 by the end of the year. The reason the other chart showed more engineering studies is we actually have taken detailed engineering action at a number of sites that are not on that National Priority List. Many of them were in the early phases of the program.

Emergency cleanups: We do those both at sites on the National Priority List and sites that are not on the National Priority List. Most of the emergency cleanups at sites on this list are site stabilizations where we have gone in and have stabilized the site until the detailed work is done, largely on subsurface contamination.

On construction, again, as you can see, we will have 126 at the end of this year.

Obviously, you have a pipeline effect in this kind of cleanup program. You will see construction going up fairly rapidly as the engineering study phase is completed on many of those projects.

Now, let's talk about the proposal we have made for the next 5 years in the administration's bill. First, the response program, the part that Senator Durenberger mentioned which is basically focused on hazardous substance releases. First, we would suggest that the focus should be on just that—abandoned sites, uncontrolled sites, municipal or industrial sites with problems, RCRA sites where we have insolvent companies, or any spills or releases of hazardous substances.

Second, we have a safety valve. That is, even where we have specific exclusions, we suggest that if there is not an ability to move under another authority, the President should have the authority to trigger the Superfund Program. Let me talk to you a little bit, before I move to the next issue, about some of the specific things we are suggesting.

For instance, we are suggesting that mining sites that could be covered under the Surface Mining Reclamation Act not be covered under Superfund. If they can't be covered under that, then they would be eligible under Superfund. If there were a major public health or environmental emergency, and for whatever reasons the Surface Mining Reclamation Act was not available, then the President could use the Superfund Program.

Second, where there is a lawful application of pesticides registered under the FIFRA and we have a problem, we are suggesting that should not be eligible for funding under Superfund. We have a major effort underway now, both on the prevention side as far as our FIFRA Program is concerned and our Pesticide Registration Program, and a review of the extent of the problem in this regard. Under our current national priority list, there are six sites in Hawaii that would be excluded by this suggestion. Those are the only 6 that would be excluded and, as a matter of fact, under all of our proposals, those are the only 6 that would be excluded from the 786 we are dealing with.

Next, we are suggesting not that you have to have defined the source of contamination before you can initiate action, but that where the source in fact is shown not to come from a traditional treatment, storage, deposition, transportation of a hazardous substance, a broad definition of a hazardous substance, then it would not be eligible under Superfund. Buildings, businesses, domestic wells—specifically, we are trying to deal with the issue of asbestos in schools as not eligible for funding under the Superfund Program.

Those specific items are a narrow exclusion. It is not the New Brighton, not the California underground storage tank release. Any of those we propose would be eligible for funding. As I indicated, as we went back and looked at the full review of sites that we have dealt with on our national priority list, the six under our proposals that stand out that would not be eligible would be the Hawaii pesticide sites. All the others would be eligible.

Finally, we make a proposal that if there is a naturally occurring substance that causes a problem, it would not be eligible for funding under the Superfund Program. A specific example would be an outcropping or a high concentration of uranium ore in one particular area that was causing problems for residents in an area. We are suggesting that it is a natural occurrence, natural phenomenon. We would not respond to that kind of situation under the Superfund authority.

What we have tried to do, Senator, with this scope issue is in fact narrowly define exclusions, as I indicated, and not, in fact, draw very sharply down the number of sites that you have seen us deal with under Superfund to this point. It is a very difficult section to try to draft, but we think it is an extremely important section for the Congress to come to grips with.

We are getting more and more inquiries, more and more suggestions, that he breadth of the law as it currently exists makes Superfund an eligible source of funding for a wide, broad array of public works projects, all kinds of water system improvement projects, all kinds of individual home and housing projects. We are suggesting this a very important provision. We feel we have worked long and hard to draft it narrowly but so that, prospectively, we can ensure that our focus and our funding is on those major problems of hazardous wastesites and hazardous substance releases which we think is the primary intent of the Superfund Program.

The second major provision of our proposal is our enforcement proposal. We, Senator, feel that the enforcement program that we have had to date has been a very aggressive program, and we would like to see it expand. There are some portions of the existing law that we would like to see modified.

Let me make clear that when we look at enforcement, we see both cost recovery in the 107 litigation route, and we also see cost avoidance, and by that I mean where we have taken an action either through court or through our administrative authorities to compel responsible parties to clean up or to pay for a cleanup before we have expended Superfund money. In fact, that is where the largest volume of our enforcement work pays off in terms of money.

For instance, last year we entered into settlements, either consent decrees of consent orders, with responsible parties for approximately $150 million in cleanup at Superfund sites. When I project a $2 billion cleanup effort over the next 5 years, that is the area in which I am projecting that figure—our strong enforcement programs pays dividends in responsible parties actually cleaning up.

We also will have a strong cost recovery program. Money received from cost recovery in no way reflects the kind of enforcement program we have in place.

We respect to specific provisions, First, retaining the strict joint and several liability provisions that we have received from court decisions on the existing law--We don't think clarification of that is required because we think it is both strict and joint and several, and we think that is appropriate as a foundation for our strong enforcement program.

Second, tougher civil and criminal penalties, civil penalties of $10,000 a day and $25,000 for criminal penalties, a few modifications such as on reporting of releases, incorporating an administrative penalty in addition to the criminal penalties.

Third, additional administrative order authority, particularly under 104 where, without the finding of an imminent and substantial endangerment required under section 106, we actually can use 104 to enter into an agreement with responsible parties to take action at a site.

Stronger access and information gathering authorities are particularly important when we are trying to obtain information on the full extent of the problem and full extent of the liability.

Next, no pre-enforcement review of selected cleanup actions. This has become a particularly troubling issue of late as we have gone in and used our order authority to compel action at a site. We specify the process that would be used, the opportunity that would be available for responsible parties both to claim and review their liability issues as well as the appropriateness of our cleanup remedy consistent with the National Contingency Plan. We specify that that would be in the 107 action. We also specify that our record of decision, where we make our decision, would be on the record as an administrative process.

So, we have tried to draft a proposal that clearly defines how we will deal with review of our orders once issued, insuring that responsible parties have the opportunity at the proper time to review both the issue of liability as well as the issue of appropriateness of cleanup.

Finally, we deal in the statute with the issue of right of contribution and contribution protection. We have embodies in the statute specific language that talks about right of contribution and contribution protection. It incorporate basically the position that we have taken in our judicial consent decrees and in our consent orders. However, as opposed to having to negotiate that each time on a case by case basis, by incorporating it in the statute we think it will move the process forward more expeditiously.

Each of those provisions, we think, is significantly important to moving a more aggressive enforcement posture under the program.

Through the the third major category of our proposals, we will expand State responsibilities. First, by asking them to take our additional responsibility for managing the cleanups by promoting multisite cooperation agreements. That is a specific provision that we are recommending in the law that makes it clear that we can enter into a broad cooperative agreement with States to manage many of the cleanups at the sites on an annual basis.

Second, we suggest eliminating the preemption language on how the States raise taxes. Many of the States, as you know, have initiated similar tax provisions to the national tax provision to raise the money required for their match for operation and maintenance expenses. We would suggest that the current preemption that prohibits certain State taxing provisions be eliminated to give them more flexibility.

Third, we would suggest including State enforcement costs as eligible. That is the overhead cost that States incur when they take the enforcement action against responsible parties. We would like to provide that funding.

Along with that additional responsibility and funding, we would like the States to pick up additional responsibility and accountability, first, by increasing the State matching share. It is currently 90 percent Federal and 10 percent State on the cleanup portion, actually the construction portion. We are suggesting moving that to 80/20, but you have to bear in mind, we are suggesting expanding our emergency cleanup program, which is 100 percent Federal. We are suggesting it continue to be 100 percent Federal with a site assessment and investigation, 100 percent Federal for the site engineering, and 100 percent Federal for the site design. So, it is only at the cleanup construction portion of the remedial project we are now suggesting that the State pick up additional match.

Second, we suggest increasing the State match for sites operated by States. We have clearly defined that if a site was operated by State or local government, instead of a 50 percent match, it should be a 75 percent match. We think clearly you have here a State or local governments that was a responsible party if they operated the site. We feel that at a maximum, the Federal Government should not provide more than 25 percent of the cleanup cost out of the Fund if that site is to be cleaned up by that responsible party, State or local government.

Finally, we have a requirement which is similar to the provision suggested by Senator Chafee that this committee adopted last year that has to do with waste disposal and the role of States. It is a stringent requirement, but it suggests that States immediately get directly involved in trying to come to grips with what to do with the waste from these Superfund sites. We would suggest 2 years in which the States would develop a disposal plan. That disposal plan could be for disposal within the State or through a compact of States. We would suggest at the end of that 2 years, if a State has not done that, they would no longer be eligible for Superfunding for sites in their State, except for emergency situations where water supply or temporary housing is required.

Finally, we would also suggest that if a State's option is for movement of the waste outside the State boundary, the State would pay the difference in transportation costs beyond the State boundary for the disposal of that waste.

Now, the revenue provision of the bill, one that we worked long and hard on last year and again this year, that the Treasury Department was particularly involved in with us. We had a number of issues we were looking at and a number of options we considered before we came up with the specific proposals that are in our proposed legislation.

The feedstock tax, we feel, has been a stable source of revenue. That could not have been predicted, I don't think, when this tax was first passed by Congress with any certainty, but I think in fact it has turned out to be a stable source of revenue, the current tax accruing approximately $300 million a year. We did find two major issues when we began to look very closely at the feedstock tax and how it could be expanded, either in rate or in substance.

Those two major issues are first that, with much pushing, there are economic dislocations and economic disincentives that come to bear fairly quickly with those feedstocks and with the industry that generates them. Second, we also feel there is a major equity problem as far as the feedstock tax is concerned. If you look at the total amount of feedstock tax, it is from a relatively narrow industry. If you also look at the specifics of who is paying that tax, you will find that approximately 10 or 12 firms are paying approximately 75 to 80 percent of the tax money.

So, the two issues we ran into on expanding the feedstock tax were, one, equity as far as tax policy is concerned, and second, economic concerns associated with the particular industry if that tax were increased. So we have recommended continuing the feedstock tax on the current substances and at the current level without expansion.

The second tax option we have proposed, after looking at a number of others, is a waste end tax. The waste end tax has programmatic advantages. It broadens the base of the group that would be taxed. We think it is a more equitable tax. It also has a much more direct relation between the kind of program we have, which is a hazardous waste cleanup program, and the industries that are in fact being taxed, which are the firms that are storing, treating, or disposing of hazardous waste.

It will programmatically do two things. It will force, we think, a review of waste reduction practices and waste reprocessing practices in industries that generate hazardous waste. We think it also will compliment very well the RCRA regulatory program which you enacted last year aimed at banning waste from land in that we propose a two-tiered taxing structure for the waste end tax—a higher tax for the traditional, less desirable forms of waste disposal such as land fills, land treatment units, surface impoundments, and a lower tax on all other types of disposal, specifically treatment, underground injection, and others.

We have proposed, over time, that those tax rates be modified each year as we take into account both changes in how much waste is disposed in each fashion as a result of implementing the RCRA program and changes in the volume of waste. We have projected, we think, a realistic amount of revenue from that waste. We have taken a conservative view of how much waste we think would fall into this category. We feel it will broaden the base, it will minimize adverse economic impact, and will ensure a stable source of revenue.

In that regard, we have incorporated into the proposal an administrative procedure for modifying the rates depending upon the revenue that is received so that if, in fact, our conservative assumptions are not conservative enough and the revenue is not available that we predicted, we would have the authority to borrow against anticipated revenue and modify the rates to recoup the amount of revenue which we would have needed in order to fund at the rate we have projected each year, which ranges from about $550 million from this tax up to about $650 million by the end of the 5-year period of time.

With those proposals, what have we then bought as far as cleanup is concerned over the next 5 years? As you can see, I have incorporated here a figure for 1982, 1985, and 1990 for both our emergency cleanup program and our long-term construction program.

First, let me say that as far as site assessment, site identification, that part that has to do with how many sites there are, we are anticipating that the vast majority of that work will be completed in the next 2 years. So, I don't have that incorporated here.

I have, however, incorporated where we are really going to be out there working on these sites. In 1982 we had moved out at 100 emergency cleanup sites. This year, as I indicated, we would be at nearly 650 sites. By the end of the next 5 years, there are almost 1,800 sites where we would have been out, we would have taken cleanup action, completed work at that site, or stabilized that site.

Under long-term remedial action, nearly 1,500 sites would have had the engineering study either completed or underway. Finally, in our construction program, as you can see, there is a dramatic increase from 163 this year up to 920 of the long-term construction projects that either would have been completed or would be underway at the end of this 5-year period of time.

We think it is an aggressive program. We think it is a program that is much larger than the program we have been operating for the last several years. We think that it balances the two things we were looking to when we looked at how big we thought this program ought to be: What is the problem, and how fast do we need to move to deal with it? We think that not only includes the size of the program but the mix of the authorities you have within the program.

For instance, we felt we needed additional authority under our Emergency Removal Program so that no site that we identify that presents a potential or a real threat to public health or the environment has to wait. We can move out on it immediately. Our Emergency Removal Program gives us that authority.

Second, we balance how much we think we can manage realistically as far as this program is concerned without running into major problems of loss of effectiveness and loss of efficiency. We balance those two things and we think we have a responsive and a responsible program which we have presented to you today.

I would be pleased now, Mr. Chairman, to answer, along with my colleagues, questions that you and members of the committee may have.

Senator STAFFORD. Thank you very much, Mr. Thomas, for a very lucid explanation of the administration's bill and the program that you see coming up in the next few years.

To my colleagues I would suggest that, if there is no objection, on the first round of questions, we limit ourselves to 10 minutes each. I have conferred with Senator Bentsen. He is agreeable to that procedure. So, hearing no objection, we will limit ourselves to 10 minutes on the first round.

The Chair would again remind members that Mr. Thomas will be here with us again on Thursday and Friday and that any action we might take tomorrow in the course of our meeting will leave Mr. Thomas free to comment on it as he might wish on Thursday and Friday.

The Chair would finally note that any members who were not here as we began and who have opening statements, we would be glad to place that in the record or members can utilize part of their 10 minutes to deliver it, as they might wish.

Having said all that, Mr. Thomas, I note the administration's bill proposes no changes to existing law relating to a standard of joint and several liability. You said in remarks to staff on Friday, I am advised, that this issue was explicitly considered during development of the administration's bill, and you explained the reasoning behind the decision to leave existing law in place with regard to this particular issue.

Mr. THOMAS. Mr. Chairman, we feel that over the last 5 years, strict joint and several liability has been a major underlying component of the administration's enforcement of the Superfund statute. We think the court decisions which have been rendered concerning that have supported the administration's position. We think that the current law and the current court decisions provide us with the strength to continue with that good enforcement program.

Hank Habicht from the Justice Department may want to elaborate on that.

Senator STAFFORD. Well, I would gather that a change might further complicate your efforts in view of court decisions and the 5-year history of succeeding under this concept.

Mr. THOMAS. We feel that it might, in fact, launch us on another round of issues in the courts to get new readings on exactly what our standard of liability or scope of liability may be.

Senator STAFFORD. All right. Is there any further answer?

Mr. HABICHT. I might just add, Mr. Chairman, that we are certainly prepared to address this issue more fully should the members have interest in that direction. As Lee Thomas indicated, a fundamental premise of the administration's approach is to provide a program that has an optimal mix of public and private resources brought to bear against the problem as well as having a program that moves forward at the least possible cost as quickly as possible.

An enforcement scheme is a critical component of the Superfund Program, as Lee indicated. Our experience has been to have an enforcement scheme that is effective and that minimizes unnecessary and highly contentious and complex litigation. This sort of scheme is extremely helpful in making that work. Joint and several liability is not a concept that anyone should support lightly in any context. It raises significant issues, but our experience has been that, to have an enforcement component, so that this is not just a massive Public Works Program, you need to have enforcement tools that make enforcement possible.

Senator STAFFORD. Thank you.

Mr. Thomas, last year you testified that a 5-year extension of the program at current levels would cost about $5.2 billion. Last year's estimate did not take into account increased costs due either to general inflation or construction inflation. As I understand it, you are now estimating the adoption of S. 494 would cost about $5.3 billion over the 5 years.

First, does your cost estimate for S. 494 take inflation into account, and, second, if the committees chooses to not adopt some of your proposed changes, such as increasing the State share to 20 percent and narrowing the scope of the program, will we have to adjust your estimate of $5.3 billion accordingly?

Mr. THOMAS. Senator, it does not incorporate a general inflation factor for succeeding years. We have looked at that and we did not incorporate that. We don't think that would increase it much.

We have incorporated what we feel is a good figure for site cost based on the experience we have had over the last several years. We don't think that would be modified over time. We looked at that very hard.

If you did not incorporate some of the suggestions that we have made, such as the State share in operation and maintenance expenses, or if you did not increase funding, you, in fact, would merely decrease the number of sites we would work on. In other words, we would have less funding available to move on certain projects. It would not be a very high figure as far as numbers of projects, but it would be some.

Senator STAFFORD. The administration bill, S. 494, proposes a substantial narrowing of the scope of the program which we established in 1980. In that context, could you please provide us with four or five examples of each of the five areas where you propose to prohibit the administration from responding? In each instance, I would like to know how much money was expended by the fund and why you consider fund response to be inappropriate.

Before you answer that, and you might prefer to do it in writing, let me propound one other question. Several of the proposed exclusions are justified on the ground that there are regulatorty programs which operate in those areas. For each of these laws, please provide the exact language which would enable you or the other responsible Government agency to, first, provide an alternative water supply; second, relocate families in communities, third, provide diagnostic assistance; and fourth, recover the cost of these actions. I would like not section numbers but the exact language and any judicial precedents supporting the administration view that these laws contain response, compensation, and liability provisions.

If you would prefer, I would accept the response in writing, since I have asked you several questions instead of just one.

Mr. THOMAS. Senator, we will work to provide that in writing. Let me say in general, though, as we took a look at our current national priority list to see how many of the sites out of the 786 we would not respond to under this series of proposals, I have identified the 6 pesticide sites, which actually form 1 site, in Hawaii as those that would be specifically excluded. I have not identified any others that would be specifically excluded.

As I indicated, I think the narrowing of the scope, as we have suggested, is looking more toward the kind off inquiries we are beginning to receive for dealing with sites under the Superfund Program in the future. Our suggestion is that the kind of projects we have dealt with are the kind that should be dealt with under Superfund, that we shouldn't begin to get into a large array of sites beyond that. That is were our narrowing is directed.

However, I will work to provide you with those specific answers which you asked for.

[The information requested follows:]

Background on SMCRA Funding
Availability for Abandoned Mineland Reclamations

- SMCRA tax on currently operating coal mines.

- Revenues vary from year to year depending on appropriations and tax collections. Over the past three years, funding available for Abandoned Mineland Reclamation grants has been:

FY83	$173 million
FY84	$263 million
FY85	$257.7 million

- There are 16 mining sites on the Final NPL and Update 2 in nine States as follows:

State	NPL Sites	Uncontrolled Reclamation Funds Remaining in FY'85	
NM	2	$3,270,280	
OK	1	$2,006,696	(no construction grants can be awarded now because of restrictions on the State regulatory program)
KA	1	$206,657	
CO	4	$2,966,393	
SD	1	-0-	(SD is not a SMCRA program State - no contributing coal mines)
AZ	1	-0-	(not a program State)
CA	3	-0-	(not a program State)
UT	2	$2,400,840	
WA	1	-0-	(Some active coal mining, but State does not have an approved regulatory program)

- Each participating State submits a plan with priority sites for action. Some States (not many) have included non-coal sites on their priority lists.

Examples of Release Categories Excluded from Response Under Proposed 101(b)(2)(A-E)

The President shall not respond to a release or threat of a release:

101(b)(2)(A)

Resulting from the extraction, beneficiation, or processing of ores and minerals which are covered under the Surface Mine Control and Reclamation Act of 1977;

- Narrow interpretation of SMCRA coverage
  Palanuik and Frank Mines, South Dakota

(B) resulting from the lawful application of a pesticide product registered under Section 3, permitted under section 5, or exempted under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act;

- Waipahu Wells, Hawaii
- Waiawa Shaft, Hawaii
- Mililani Wells, Hawaii
- Kunia Wells I, Hawaii
- Kunia Wells II, Hawaii
- Waipio Heights Wells II, Hawaii

(C) to the extent it affects residential dwellings, business or community structures, or public or private domestic water supply wells, unless the release or threatened release emanates from a vessel or facility used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances;

- Asbestos in schools, churchs, buildings and homes
- Pentachlorophenol treated homes
- Lead paint chipping off homes

(D) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

- Kingman Airport Industrial Area

(E) covered by and in compliance with a permit, as that term is defined in section 101(10), if such hazardous substance was specifically identified, reviewed, and made part of the public record in issuing the permit and the permit was designed to limit such substance.

- hypothetical example

EXAMPLES OF SITES THAT WOULD BE EXCLUDED UNDER THE PROPOSED AMENDMENTS AND COVERED BY SMCRA

Examples of mining sites that would be excluded by the proposed amendments to CERCLA due to response under SMCRA would include the Palanuik and Frank Mines (ND Uraniferous Lignite Mines) in southwestern North Dakota. Coal deposits at these mines are associated with low-grade uranium deposits, and due to mining operations radioactive elements have been discharged into surface waters. Funding for response actions under SMCRA is anticipated. [Note: these sites have been scored using the HRS. The scores were provided to the House Oversight and Investigations Subcommittee.]

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

WAIPAHU WELLS
County of Honolulu, Island of Oahu, Hawaii

. The Waipahu Wells Site consists of four drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Ewa Plain in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with ethylene dibromide (EDB) and trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. The Waipahu Wells are part of a distribution system which serves 13,700 people in Waipahu, Ewa, and Waianae.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing dibromochloropropane and TCP with granulated activated carbon and with aeration towers. However, because of continuing contamination, the people served by the Waipahu Wells are being provided with an alternative supply of drinking water.

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA "Superfund")

WAIAWA SHAFT
County of Honolulu, Island of Oahu, Hawaii

The Waiawa Shaft is located on the Ewa Plain in the County of Honolulu, Island of Oahu, Hawaii, and is owned and operated by the U.S. Navy. The well is part of a closed distribution system which provides drinking water to 64,000 people in the area of McGrew Point, Pearl Harbor, and part of Hickam Air Force Base. The well is contaminated with dibromochloropropane (DBCP) and trichloropropane (TCP), according to analyses conducted by the U.S. Navy and other government agencies.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers. The Navy is currently reviewing alternative treatment methods for DBCP removal in a study designed to complement the Brand of Water Supply effort.

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

MILILANI WELLS
County of Honolulu, Island of Oahu, Hawaii

The Mililani Wells Site consists of six drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located in on the lower Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with dibromochloropropane (DBCP) and trichloropropane (TCP), according to tests conducted by the Hawaii Department of Health and other government agencies. Three of the wells are presently not being used. The Mililani wells normally supply water to 19,500 people through a closed distribution system.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers.

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

KUNIA WELLS I
County of Honolulu, Island of Oahu, Hawaii

The Kunia Wells I Site consists of four drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. The Kunia Wells I are part of a distribution system which serves 21,000 people.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing dibromochloropropane and TCP with granulated activated carbon and with aeration towers.

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

MILILANI WELLS
County of Honolulu, Island of Oahu, Hawaii

The Mililani Wells Site consists of six drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located in on the lower Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with dibromochloropropane (DBCP) and trichloropropane (TCP), according to tests conducted by the Hawaii Department of Health and other government agencies. Three of the wells are presently not being used. The Mililani wells normally supply water to 19,500 people through a closed distribution system.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers.

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

KUNIA WELLS I
County of Honolulu, Island of Oahu, Hawaii

The Kunia Wells I Site consists of four drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. The Kunia Wells I are part of a distribution system which serves 21,000 people.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing dibromochloropropane and TCP with granulated activated carbon and with aeration towers.

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

KUNIA WELLS II
County of Honolulu, Island of Oahu, Hawaii

The Kunia Wells II Site consists of two drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with dibromochloropropane (DBCP) and trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. They have been closed since July 1983. The wells are part of the Kunia distribution system that provides drinking water to about 13,700 people.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers.

National Priorities List Site

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

WAIPIO HEIGHTS WELLS II
County of Honolulu, Island of Oahu, Hawaii

The Waipio Heights Wells II Site consists of two drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located in Waipio on the lower Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. One well is contaminated with trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. The other well has been shut down for repairs and has not been tested for contamination. The wells are part of a distribution system which serves 3,400 people in the Waipio Heights area.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing dibromochloropropane and TCP with granulated activated carbon and with aeration towers.

Examples of excluded categories of problems 101 (b)(2)(C) - structures

Pentachlorophenol Treated Homes

There are apparently some sites involving log houses that have been treated with pentachlorophenol (penta or PCP), a wood preservative. Two examples are the Fowler residence in Madisonville, Kentucky and the Loehr residence and others in Evansville, Indiana. CDC reviewed analytical results of wood/soil samples from Fowler residence and determined that penta levels do not pose an "undue level of concern". CDC recently took blood samples of Loehr family members to verify penta concentrations of 3400 ppb reported by the family's medical doctor. Awaiting results of the sampling.

Other problems include structures constructed with asbestos, soil contamination from lead based wood chips that have fallen from individual homes, and contamination of homes from radioactive substances brought to the homes.

There are no other listed sites of this nature.

National Priorities List Site **AZ Arizona**

Hazardous waste site listed under the
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)("Superfund")

KINGMAN AIRPORT INDUSTRIAL AREA
Kingman, Arizona

Conditions at listing (December 1982): The Kingman Airport Industrial Area encompasses about 6 square miles northeast of Kingman in Mohave County, Arizona. The valley is semiarid with no permanent surface water. The area depends on ground water for all domestic, municipal, industrial, and agricultural purposes. All wells drilled to date into the Airport Basin, the aquifer supplying drinking water to 20,000 people in Kingman, contain hexavalent chromium. Five wells have chromium levels that have exceeded the maximum level set by EPA for chromium in drinking water.

Status (June 1984): EPA deferred rulemaking on this site in September 1983 to allow more time for resolving issues related to its inclusion on the NPL. In its review of the Kingman Airport Industrial Area, EPA determined that the chromium occurs naturally in ground water and is probably not related to any industrial or other human activity. EPA believes that CERCLA is not intended to correct undesirable natural conditions. Therefore, the Kingman site is not included on the NPL at this time.

EXAMPLES OF FEDERALLY PERMITTED RELEASES THAT WOULD BE EXCLUDED BY AMENDMENTS

At the present time EPA has not identified any examples of Federally permitted releases on the National Priorities List that would be excluded by the proposed amendments to CERCLA. A hypothetical example of such a release would be a surface water discharge of toxic substances allowable under NPDES permit issued under the Clean Water Act where those substances were specifically addressed in the permit and the discharges are fully in compliance with the permit. Another hypothetical example would include a plume of ground water contaminants from a hazardous waste management facility permitted under the Resource Conservation and Recovery Act where the permit had specified allowable alternate concentration limits in ground water for those contaminants.

Senator **Stafford**. All right. Section 104 of S. 51 establishes cleanup standards. In a briefing on the Agency's proposed changes to the national contingency plan, your staff said that the EPA proposal was essentially the same as what we have included in S. 51. A moment ago you appeared to say that the cleanup language of your bill, S. 494, also reflected the proposal made in the national contingency plan. Frankly, I prefer the language of S. 51 as much as anything else because the committee approved it last year and your proposal may be new.

Are you wed to your language in this or other areas?

Mr. Thomas. Senator, today I am wed to the language in our proposal in this and in other areas.

Senator **Stafford**. We will see if, in a week, we can have a divorce then. Or, at least a separation.

Mr. Thomas. This particular section does incorporate the final policy which we promulgated about a month ago in our national contingenty plan revision. I will say that, as we discussed last year, this was a very difficult set of language to develop, in policy as well as statute. We worked through this over a period of over a year, I would say, within the Agency. We think this is a good way to proceed with how clean is clean issues.

Senator **Stafford**. All right, thank you very much.

The Chair wants his colleagues to realize he has confined himself to the 10 minutes and is timing Senators.

Senator Bentsen?

Senator **Bentsen**. Thank you very much, Mr. Chairman.

Mr. Thomas, in taling about the through-put tax, I notice that you referred to it, and others did, as a stable source. I think that has been true up to now. Certainly, it is the easiest one to apply, and that is one of the reasons it was utilized.

One of the things I note is that these big international companies tend to pay a lot more attention to the bottom line than the flag under which they serve. Some of them have made deals with the Saudis and others through the Middle East. When you try to determine whether they are crying wolf or it is really happening to them, I note that almost every one of them is laying off employees in this country.

I don't want to tilt it over from an economic standpoint where they just emphasize their operations offshore and close them down here. That is why I think it is important that we broaden this base. I am pleased to see your start in that direction.

It is going to be much more difficult to assess the end use tax than to fully anticipate it, I think. But the question of stability in the through-put tax is one that will be moot, because if they move offshore, you no longer have a stable source.

What I want is a bill passed through this committee that passes Finance and passes the floor. I want one that works and accomplishes what has to be done in cleaning up these sites, a substantially expanded program and one that is funded, because if it isn't funded, down it goes.

In the practicalities of it, one of them that has been brought to my attention is the question of the availability of insurance. People in the industry have come to me and, I am sure, to the other members of this committee over the last few days talking about the difficulty of the implementation of the Superfund and the hazardous waste regulatory programs that results from a drastically shrunken market availability of liability insurance that is hardly available to anyone manufacturing or disposing of hazardous substances. That is going to make it very difficult to meet the financial responsibility requirements of Superfund. If it is unavailable to the contractors, it may soon interfere with the pace of that program.

I would like to ask you, when they tell me that the Jackson Township decision effectively overruling the so-called environmental impairment exclusion in general liability policies, where do we go from there? What do we do to try to see that such insurance or protection is available so we can get this work done in cleaning up these sites? Do you have some suggestions in that regard?

Mr. THOMAS. Senator, almost similar to the comments that were made earlier, the insurance issue that has arisen during the last number of months is one that we also have become very concerned about, and we are trying to analyze its full scope in order to determine what kind of provisions may be necessary, both in this statute or as well in policy, both in our RCRA program and in this Superfund program. As you recall, last year and again this year, we have made proposals concerning liability of contractors who are doing work on Superfund sites.

However, the issue that has been raised of late is far broader than that issue, I think. We have begun to work with the insurance industry itself to try to fully determine exactly what the scope of the problem is and what some alternatives may be.

Today, I regret I don't have an answer as to either of those, how extensive a problem we have or what some alternatives may be. I would hope we would have that over the next several weeks as we try to work on this issue.

Senator BENTSEN. Let me further state that I, in no way, want to see the progress of this bill impeded at these hearings, but I will ask for the chairman to let us have some hearings after it has passed this committee and allow those people to testify and you to testify in that regard, if you will, and see if we can come up with some solutions so that we don't impede the progress of cleaning up these sites.

Mr. THOMAS. I think that would be excellent. We would like to participate with you on that.

Senator BENTSEN. Now, your bill would repeal the postclosure liability fund which absorbs the current postclosure tax into the general waste end tax. We passed that to give some assurance to those communities that were accepting hazardous waste management facilities. If they were assured that the funds would be there to cover cleanup costs and any third party damages, that they be there in perpetuity, perhaps they would be more ready to accept a well-run permitted facility in their midst.

If you take away that one key element of assurance, and assuming the Superfund is not going to be here forever when these facilities might later be causing problems, and according to the Treasury study, private insurance isn't available, what can you tell those communities to guarantee their long-term protection?

Mr. **Thomas**. Senator, we found that the postclosure fund was actually a very, very narrow fund as far as which facilities may in fact be covered under it, and the ones that were probably most in jeopardy over the next number of years of not having the resources to clean up a problem would never have been covered by it. Additionally, the facilities that would have more than likely had the funds would be the ones that would have been covered by the fund. It almost ran contrary to our overall responsible party authorities and enforcement authorities under Superfund to, in fact, say now we will pick those up under some separate fund.

Our suggestion is that if, in fact, we have RCRA facilities that over a period of time after they close present a problem, the liability associated with taking care of that problem should be taken care of by the responsible parties. As you know, we have financial responsibility requirements undr RCRA to ensure that that happens. That is a far broader category. As a matter of fact, that is the total category of hazardous waste operators as opposed to a very narrow category.

Senator **Bentsen**. Mr. Chairman, you alluded to the problems, in your opening statement, of requiring liability insurance so we could pursue the cleanup of these sites. In no way do I want to impede these hearings or slow down the passage of this bill, but this problem has arisen, and it seems to be a very serious one. I would strongly urge you that, after we have completed the passage of this bill from this committee, at the earliest opportunity that we have some hearings where these people are allowed to address it and see what we can do to come up with something, and that Mr. Thomas be there, to see what we can do to address this problem.

Senator **Stafford**. Well, Senator Bentsen, I would be glad to accept that suggestion. I had an opportunity to talk with spokesmen for the insurance industry last week. At that time, at least, they said they had a problem but they didn't know what the solution might be. I told them that if they thought they could arrive at some proposal we should hear, we would make the time available to hear it. So, without slowing down this bill, at some subsequent time, if the industry has a proposal, we would be glad to hear it and hold hearings.

Senator **Bentsen**. Good.

Mr. Thomas, last year the EPA supported cost recovery under section 107 for the cost of response to releases of pollutants and contaminants. This year, the Agency is proposing to eliminate any authority to respond to releases of pollutants or contaminants.

In how many cases of short-term removal actions and longer term remedial actions has the Agency responded to pollutants or contaminants rather than hazardous substances?

Mr. **Thomas**. Senator, I don't believe we have responded to any sites under the pollutant or contaminant category. I believe they have all been categorized as hazardous substances. The suggestion we were making last year had to do with clearing up the legal issue of whether, if we responded, we could recover our cost.

As you indicated, this year we have proposed eliminating pollutant and contaminant as a category for response so, obviously, the cost recovery provision would not be required. I don't believe, during the last 5 years, we have responded in that category to situations where we did not have a hazardous substance.

Senator **Bentsen**. Mr. Thomas, I understand my time is about expired.

Senator **Stafford**. Thank you, Senator Bentsen.

Senator Mitchell.

Senator **Mitchell**. Thank you, Mr. Chairman.

Mr. Thomas, in response to a question by Senator Stafford, you indicated that the $5.3 billion figure contains no adjustment for inflation. Is that correct?

Mr. **Thomas**. That is correct.

Senator **Mitchell**. You are here representing the administration's position, are you not?

Mr. **Thomas**. Yes, sir.

Senator **Mitchell**. Are you aware of the administration's projections in the President's budget recently submitted to Congress regarding inflation?

Mr. **Thomas**. Related to Superfund?

Senator **Mitchell**. No, related to inflation generally.

Mr. **Thomas**. No, sir.

Senator **Mitchell**. Well, the President's budget projects that over the 5-year period, inflation will average just under 4 percent. I can't understand how, on the one hand, the administration projects that inflation will occur at a rate of about 4 percent or just slightly under it and, on the other hand, come in and say we don't think that with respect to this program inflation is a factor. I understand what your answer is.

Second, does your figure include any adjustment for increases in the average cost of cleanup per site?

Mr. **Thomas**. Senator, it doesn't, and as you know, we have adjusted that several times over the last 2 years. We fee that that proposal we have in the current average cost per site is the one that now, given more experience, is the one that we think will hold.

Senator **Mitchell**. Of course, the same answer was given in each of the previous 2 years, and in each case, however, the figure increased. Just for the record, they ought to be stated. In 1981, the average cleanup cost per site was $2.5 million. In 1983, it was $4.5 million. In 1984, it was $6.5 million. In 1985, it was $8.1 million. And in each of the previous 2 years, the response made by either you or someone in your place was the same thing, "Well, we have now reached the learning curve, and this is it." Let's hope you have, but I think you can understand some concern on our part.

Finally, does your projected $5.3 billion figure include any funds for the payment of natural resource damage claims now authorized by law with respect to which States have filed approximately $2.7 billion worth of claims against the fund?

Mr. **Thomas**. No, it does not, Senator. One of the proposals we have made in this legislation is to eliminate natural resource damage claims as an eligible item for fund reimbursement—not the assessment of damages, nor the enforcement of damage reimbursement from responsible parties, nor damage restoration as a part of a response action, but as a separate claim against the fund for damages or restoration. We have suggested it not be eligible and therefore have not incorporated it.

Senator MITCHELL. So, if you say that you need $5.3 billion over 5 years to do the job, and you make these assumptions, if any or all of these assumptions prove to be incorrect and there is in fact some level of inflation in America over the next 5 years, or there is in fact an increase in the average cost of cleanup per site, or Congress refuses to accept your recommendation on natural resource damage claims and you are forced to pay them, then the $5.3 billion figure would be inadequate. Isn't that correct?

Mr. THOMAS. Senator, you would adjust the number of projects you would be working on.

Senator THOMAS. I beg your pardon?

Mr. THOMAS. You would adjust the number of projects you would work on. You either increase the money or you decrease the projects.

Senator MITCHELL. Right. In other words, you would clean up fewer sites.

Mr. THOMAS. That is right.

Senator MITCHELL. Actually, if the assumptions were off far enough, and we don't know what the line is in the continuum, but you could actually be operating at a pace slower than the current pace, could you not?

Mr. THOMAS. Well, if we take into account—if we make an assumption that we would start paying natural resource damage claims at the rate they came in last year, we may clean up no sites.

Senator MITCHELL. I would like to go to another area now, Mr. Thomas, and that is the area in which, as you know, I have had an interest and we have talked many times before, and that is the provision for compensating persons injured through exposure to hazardous substances, the so-called victim compensation.

When we discussed Superfund last year, as you recall, you stressed very heavily and, I thought, with considerable force and persuasion, that we ought to wait until we got the study that the original law had called upon EPA to produce before acting on the legislation. Indeed, several members of the committee who opposed acting last year did that.

My question to you is, did you review that report in connection with your recommendations or lack of recommendations regarding vicitim compensation?

MR. THOMAS. Yes, sir, Senator. As your recall, that report also was made available during some of our discussions last year. I am going to ask Rick Willard, if I could, from the Justice Department, to participate with me in responding to questions on this. As you recall from last year, this is an issue that the Justice Department has taken a lead on for the administration. We have participated in it actively, but I think Rich probably could respond to that as well.

Senator MITCHELL. Well, I would like, then if I could post the question, I would like to refer specifically to that report which was prepared by the EPA, was it not? You are familiar with that report.

Mr. THOMAS. You are talking about a 301 study, Senator, specifically relating to——

Senator MITCHELL. Yes.

Mr. **Thomas**. Yes.

Senator **Mitchell**. As I look at this report, and it is difficult for someone like myself with no technical background to understand, it contains several exhibits and a lot of data regarding 25 substances most frequently reported as present at the 546 national priority sites. It then goes on to describe some of those substances in what I found to be a manner which raises deep concern.

If I could just summarize briefly, I know time is short. Maybe we could get into this in a second round of questioning, but it says, "As can be seen in the exhibit, most of these substances present serious hazards to humans and animal life, depending on the concentration counted and the duration of exposure. In summary, 7 of the 25 substances,"—and I repeat, these are the 25 substances most commonly found at the existing sites—"are very toxic to aquatic life. Nearly half of the substances are known or probable human carcinogens and, thus, theoretically, pose finite risk even at the smallest concentrations. Nine of the 25 are known to be mutgens. Seven of the 25 are known triatogens. Seven of the 25 will ignite at room temperature," and so on it goes.

I would like to ask whether you do not feel some concern for the lack of a victim compensation provision in the bill that you have and whether or not you agree there is a need for this, given the information contained in the report, which the EPA has provided?

Mr. **Thomas**. Senator, let me comment and then I will ask Rich to comment. We may also want to have Dr. Houck who is here from the Centers for Disease Control as well.

We do not feel that a victims' compensation component should be a part of the Superfund statute. Obviously, it is not a part of the proposal we made.

There is no question that many of the substances we deal with at Superfund sites are bad actors with respect to mutagenicity or carginogenicity. The major issue has to do with whether there is any cause or effect relationship between those substances at sites and individuals who may live near those sites. We do not think, in this case, that there is that kind of cause and effect relationship that should be dealt with in an administrative process. We think that if there is a direct cause and effect relationship that there is a legal remedy available.

As a result, we have not proposed an administrative scheme related to victims' compensation specifically for Superfund.

Beyond that, Rich, you may want to comment.

Mr. **Willard**. There are, of course, a number of compensation programs or entitlement programs which the Federal Government provides that provide benefits to people who receive injuries or illness that may be attributable to exposure to hazardous substances, including Medicare, Medicaid, Social Security disability insurance, as well as, of course, worker compensation programs for people who have occupational exposure. So, there is already a fairly large system which provides entitlements and social programs to benefit people who suffer illnesses or inability to work.

In addition to that, there is an existing tort system under State law that provides compensation where people can establish the legal requirements for that compensation. We do not see the need to create a new kind of administrative entitlement program to provide additional levels of benefits as part of the Superfund reauthorization.

Senator MITCHELL. Well, I will have several comments to make on that in further questions in the next round, but my time is up now.

Senator STAFFORD. Thank you, Senator Mitchell.

Senator Durenberger?

Senator DURENBERGER. Thank you.

Lee, let me go back to my original question and your response to it. It relates, on pages 2 and 3 of the bill, starting with subsection 2 under b, and it is actually subsection c of subsection 2 on page 3 I am referencing: "The President shall not respond under this Act to a release, or threat of a release, to the extent it affects residential dwellings, business or community structures, or public or private domestic water supplies unless the release or threatened release emanates from a vessel or facility used for the deposition, storage, processing, treatment, transportation, or disposal" et cetera.

I guess I need you to take just a minute or so to clarify that just a little bit more. I gave you the example of New Brighton not only because I am familiar with it but I think it would illustrate, for purposes of your response, just exactly what that section means. The TCE contamination, obviously, can come from a whole variety of sources. In so many cases, that includes septic tanks where it is used as a cleaning agent. I guess there is a more appropriate name, but that is what it is used for.

I am curious to know whether under the language of this bill if septic tank contamination would be eligible for fund response. Would the people in New Brighton need to prove that it was the U.S. Army and not its own septic tanks that caused the problem? How would that be handled?

Mr. THOMAS. Senator, as we drafted this, and this is certainly a category where your staff might work with ours on how the language could be cleared up, our intent was specifically not to include New Brighton as an example. In other words, with respect to the issue of having to, before responding, try to prove that there is a connection between one of these kinds of facilities or vessels and the substance you are dealing with, the cause and effect relationship, our intent was that you would not have to prove that cause and effect relationship before you would respond.

Our intent here was to have a fairly narrow exclusion that would deal with things of the type, as a specific example, of asbestos in a school building, not the kind of thing that would be like a California underground storage tank release where we haven't been able to pinpoint any particular tanks, or we haven't been able to pinpoint exactly which source is the source that we think is responsible. It was not to exclude those things.

We would be pleased to work with you on that, Senator. It was difficult as we tried to draft these exclusions not to exclude large number of sites we have been dealing with and that you are familiar with. We had specific examples. It was very difficult to craft language that excluded certain things and not others, but if we can work with you to more clearly define that, we would be glad to.

Senator DURENBERGER. Let me ask you what happens to the sites you are concerned about which you investigate and rank but which don't reach 28.5 on your hazard ranking system. Do you have any kind of a statistical summary on the state of those sites?

Mr. THOMAS. No, I don't, Senator. I am sure we could probably provide you with information on the fate of those sites. They could either be responded to by private parties, by State or local, or by our emergency authority. I am sure you will find that there is probably an array of responses that is going on to a number of those sites.

Senator DURENBERGER. Then let me ask you to comment on the petroleum exclusion under Superfund, now that we have the leaking underground storage tank regulations underway. Do you have any sense for the gap that might exist between the Regulatory Program and the Superfund Cleanup Program?

Mr. THOMAS. We really don't, Senator. I think it will probably be another 18 months or so before we will get a much better feel for whether there is a gap or how much it may be as we get into the regulatory program with the underground storage tanks. As you know, you have incorporated responsible party corrective action there under the underground storage tank program, which we think is the way to go. We don't have any better information today than we had last year. I think in another year and a half we will have much better information, or 2 years, as we implement that regulatory program.

Senator DURENBERGER. Finally, let me ask you about the cost recovery, and George mentioned the 301 study. I wonder if it is convenient for you to go year by year and give me some projection of the fund expenditures you expect to recover through enforcement. The 301 study says the 1984 amount, for example, of recovery was $6 million. I am curious to know if it ever gets much larger than that.

Mr. THOMAS. It does, Senator. The cost recovery part, which is the section 107 actions that we take after we have completed cleanup, have been much slower to accrue revenue to the fund than was predicted, for instance, 4 years ago when Congress enacted this program for a couple of reasons. One is that we generally take those actions after we have completed cleanup.

We have underway now about $150 million in 107 cost recovery actions that have either been filed with Justice or referred to Justice. I think we are seeing 2 pretty hefty pipelines as we look to the future as to the kind of recovery that will accrue to the fund from that. Our projections run from $32 million in fiscal year 1986, next year, up to $190 million in 1990 as far as that kind of cost recovery.

In addition to a slow start, you also find that the harder you push on your 106-type Enforcement Program, the less you can anticipate getting on your actual cost recovery under 107, because you have taken your best cases from an enforcement point of view and you have reached settlements, as opposed to having to expend the fund. Additionally, you find that the 107 cases in fact will generally receive fairly extensive litigation in that the site has already been cleaned up. In fact, you have your toughest case as far as the Government is concerned and, often, a case that will go through court over a period of however long that may take. So it does take a while, but it is a part of the program that we are strongly committed to. We do, in fact, think that pipeline will begin to pay dividends, as you can see from our projections.

Senator **Durenberger**. Thank you very much, Lee.

Thank you, Mr. Chairman.

Senator **Stafford**. Thank you, Senator Durenberger.

Senator Baucus?

Senator **Baucus**. Thank you, Mr. Chairman.

Mr. Thomas, first I would like to tell you that I have some of the same concerns that Senator Bentsen raised with respect to insurance liability. I know you discussed all this and I know the chairman did too. I encourage you to look at that, as well.

The first question I have for you revolves around scope and definition of what is included and what is not included, particularly under title I in the administration's bill. I understand that the President "shall not respond to release"—and this is the language now from title I—"resulting from the extraction, benefaction, or processing or ores and minerals, including phosphate rock and overburden from the mining of uranium ore which are covered under the Surface Mining Control and Reclamation Act of 1977."

I am asking, now, does that mean that waste tailings and the smelter sites would be excluded? The language says including "resulting from extraction, benefaction, or processing or ores and materials."

Mr. **Thomas**. If they are covered under that act, they would be excluded under this act. Now, the two ways they would be included is if there were a situation where they were not included under SMCRA or if there were a public health or environmental emergency and, for whatever reason, even though they were covered under that act, resources were not available to respond. Then the President could use Superfund.

Senator **Baucus**. Frankly, it is confusing drafting, because that paragraph sandwiches in I think uranium ore to phosphate which is not included under the Surface Mining Control Act, as I understand it. I am asking these questions because the whole paragraph is very confusing.

Mr. **Thomas**. I think that might be an earlier draft, Senator. Is that actually in the bill?

Senator **Baucus**. As I have it, it is.

Mr. **Thomas**. The copy I have——

Senator **Baucus**. I will read you the language.

Mr. **Thomas**. The intent there had to do with the SMCRA Act, Senator, and it was just to exclude those things that could be covered under that act.

Senator **Baucus**. OK, well——

Mr. **Thomas**. I think as we went through the drafting we actually picked up on that problem you have noted and deleted those.

Senator **Baucus**. OK, I have the most recent draft now, and your most recent draft says: "resulting from the extraction, benefaction, or processing of ores and minerals which are covered under the Surface Mining Control and Reclamation Act of 1977."

Mr. **Thomas**. Right.

Senator **Baucus**. So, you saying that if extraction, et cetera, is covered under the Surface Mining Control Act, that then they are excluded from this.

Mr. THOMAS. That is correct.

Senator BAUCUS. But if they are not covered under that legislation, then they could be included.

Mr. THOMAS. That is correct.

Senator BAUCUS. OK.

My second question goes to the natural resource damage claim portion. As I understand it, in July you recommended that that provision of Superfund be budgeted at $63 million. Is that correct?

Mr. THOMAS. In the original proposals we were talking about for the coming year, we did, I think, use an estimate of $63 million. I think that was the total amount that—at any rate, it was $63 million. You are correct. At one point in time, we were proposing that.

Senator BAUCUS. Last July, you recommended $63 million, why are you recommending zero in this bill?

Mr. THOMAS. We are proposing that that portion of fund eligibility be excluded from Superfund. It has to do with the amount of money that we think is available for response, the problem we think that is out there that needs to be dealt with as far as response is concerned. We don't feel that that should be an eligible item.

Senator BAUCUS. Why, though?

Mr. THOMAS. Just simply because of the matter of priorities, Senator, of what we think has to be dealt with in the country in cleaning up these sites. We do deal with natural resource damages as we respond in cleaning up ground water aquifers or cleaning up contaminated soil or restoring a site, but when it comes down to priorities, we feel that has to be a higher priority now than paying a lot of money out of the fund for damages that may or may not have been caused by a site. It is a matter of priorities.

Senator BAUCUS. Well, a lot of this I think comes down to proximate cause, if you will, because I know in Montana, for example, I think you know the situation I am referring to is where a dam is erected across a river. It is a fork of the Columbia, and there is an arsenic problem there. The dam has contaminated the ground water which is available for a well very close to the dam, a well that is used to supply the water for the town there.

The trouble is that the arsenic comes from at least 100 miles upstream. It comes from tailings which are 100 miles upstream and is also from a smelter which is close by. It is clear that the arsenic problem which has contaminated the ground water and the well there is caused, as I said, by a site at least 100 miles upstream.

It seems to me that if Superfund is designed to clean up sites and for emergency responses, and so forth, that this is a clean case. My concern is that there may be other cases like this around the country. I am curious why, then, we can't have natural resource damage provisions to accommodate these kinds of problems.

Mr. THOMAS. In a situation like that, we are certainly proposing that we respond to the problem as far as public health or environmental risk is concerned. What we are suggesting is that natural resource damages, damages that may have resulted to the fauna or general ecology of the area, not be eligible for reimbursement out of the fund. As an example, Senator, last year I received $2 billion in requests from the fund for natural resource damages. None of that related to cleaning up a site or responding to a health threat at a site or an environmental threat at the site. What it related to was damages to nature.

I am not downplaying damages to nature. I am just suggesting that as far as priority is concerned and use of the money, we have to respond to and clean up the sites that we have all talked about so often before we start using that fund for providing damage reimbursements. It would have nothing to do in that case, however, with our ability to deal with that well, to deal with cleaning up any part of that site around that well.

Senator BAUCUS. So, you are saying that if the damage is only to nature, then it shouldn't be compensable, but if the damage is to people, in some way it should be. Is that true?

Mr. THOMAS. Well, I am saying when we establish our priorities that we should focus on restoration of that site. If restoration means we restore the natural damages at that site, then we will do that. If it is to restore that site so that it no longer presents a threat or a potential threat either to the environment or to the public health, then we should do that. But if it says to go the next step, which is to reimburse for damages that may have occurred, and if you look at the broad array of damage claims I have received, it is very difficult for me to say that we should begin to use the fund to reimburse a broad array of damage claims. We have the kind of problem and the kind of issues in this country under the restoration program and response program that I think are important to put at the top of the list.

Senator BAUCUS. I asked you a while ago how far along you were going to be in issuing the regulations. How far along are you now?

Mr. THOMAS. I am hoping to have them issued this week, Senator.

Senator BAUCUS. OK. Thank you very much.

Senator STAFFORD. Thank you, Senator Baucus.

Mr. Thomas, you have said that the existence of a scheme of strict joint and several liability at that Federal level not only makes it easier for you to recover your costs but provides a substantial incentive for responsible parties to act voluntarily. I gather, though, from statements which you and other administration people have made that you do not favor a Federal cause of action for individual citizens. I simply wonder at the apparent fact that you favor a Federal cause of action for the Government but not for individual citizens, and if there is some comment you might have on that.

Mr. WILLARD. As you know, Mr. Chairman, I appeared before you last summer to testify on the proposed Federal cause of action and thereafter, the Department of Justice did submit its views on the proposal that you introduced as part of S. 2892 in which I noticed you have announced an intention to introduce as an amendment. Basically, the reason for the difference of the treatment is that we think that the importance of eliminating an ongoing hazard of engaging in the kind of cleanup that the Administrator has been testifying about justifies bringing out the most extraordinary kind of legal tools and remedies so as to eliminate all possible obstacles to getting the job done and getting it done fast. Those include a number of doctrines that the law has not seen fit to impose for normal tort recovery programs. We think it would be an unwarranted expansion of those kinds of tools to use those for the establishment of liability under a Federal cause of action.

In addition, as you are aware, Mr. Chairman, we had a number of other concerns about the proposed Federal cause of action, as well.

Senator STAFFORD. Thank you very much. I dare say that Marvin Belli would be disappointed in your answer.

All right. Thank you. That completes the questions I have.

Senator Mitchell?

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Willard, in response to my last question on victim compensation, you said that you didn't think it was necessary because there were all these other programs. You cited Medicare, Medicaid, Social Security disability, among other things.

Are you aware that the victim compensation program proposed by me and considered by this committee which Mr. Thomas already testified against by definition applied only to persons who had no eligibility under some other program?

Mr. WILLARD. Senator, I have seen a staff draft of the latest version of your proposed amendment, and I saw the version that was included in S. 2892 last year. The draft I saw does indicate that there is a nonduplication of benefits provision covering insurance benefits that may be provided, but it was not clear from the draft I saw whether or not that would also extend to such benefits as Social Security, VA, Medicare, workers comp, and so forth.

Senator MITCHELL. So, if we change it to add those, will you support the bill then?

Mr. WILLARD. No, Senator, we will not, but it——

Senator MITCHELL. So, really, then, the reason that you advance is not a reason for opposing the bill because you wouldn't support it even if we accommodated that opposition.

Mr. WILLARD. The point I was trying to make was that this proposal would provide a more generous level of benefits to persons eligible for benefits under this program than is currently available for other people who suffer diseases, injuries, or misfortunes under broad-based Government programs.

Senator MITCHELL. We won't debate now the eligibility question under Social Security disability or Medicare or Medicaid—they are limited to persons who fall into certain categories. The legislation we are proposing does not intend to duplicate that but make coverage available where it doesn't now exist.

I think it is somewhat misleading for the administration to continuously come in here and raise arguments such as you have done when, in fact, that is not the reason for your opposition. If I change that bill, if I ask you to draft it in a way that made it nonduplicative of any Government program you still would oppose the bill. Suppose we made the level of benefits no higher than the lowest level of benefits under any of these programs. Would you then support it?

Mr. WILLARD. Senator, what you are saying, though, is that it would have eligibility standards under which people would be eligible for benefits under this program who would not be eligible in light of the eligibility limits set up under Social Security, Medicare, or Medicaid. That is, it would pay benefits to people who have a higher income than permitted to qualify for Medicaid. What that does is it erodes the limitations that Congress has set on these entitlement programs and creates a large obligation for the Government, money that is going to have to be paid from some source or another.

Senator MITCHELL. The demonstration program is limited in dollar terms, as you well know, and the argument about the large amount remains to be seen. We don't know that.

We do know that individual families have a very, very difficult time under these cases. They are not eligible for other programs. It is facetious to say Social Security disability when you are talking about young children with leukemia, and you are arguing about the State court system.

You are familiar, I am sure, as a lawyer, with the study and report that was made to the Congress regarding the State court tort system of recovery which concludes that although there are, theoretically, methods of legal recourse available, as a practical matter they are simply not available. There are numerous obstacles for these individual families recovering under the State court tort system. They are at an impossible disadvantage in proceeding under those avenues.

I just find it very, very discouraging to hear the administration's repeated opposition with these sort of make-weight arguments when every time an argument is made I say, well, all right, if we accommodate that argument, will you support the bill, and the answer is no. It demonstrates very clearly the insincerity of the arguments in opposition to the program.

I want to conclude on this point by just making one further point here from this study that you yourself prepared. We have had Dr. Houck here several times, and part of your opposition to this has been the difficulty of establishing cause and effect. I have acknowledged that. In fact, I believe that to be a very strong argument in favor of such a program, because if the U.S. Government, with all the resources, all the knowledge, all the skill that it can marshal to deal with a problem like this can't establish cause and effect, what possible chance does some family of working people, such as those we have had before this committee time and time again, which the chairman, and the other members of the committee, will recall who suddenly find their children contracting leukemia and dying, have? How can they possibly establish cause and effect if you can't do it, Dr. Houck can't do it?

Yet, you come back and say they have the State court tort system. Let me just read you from your own report one paragraph about the difficulty of this task. This is after describing in some detail the adverse effects of the 25 substances found most frequently at the sites that have been assessed. These are places and neighborhoods where Americans live and where they are exposed to this.

After describing the tremendous potential adverse effects of each of the 25, it concludes with this paragraph:

> It should be remembered that the specific chemicals reported do not fully describe the range of substances found at NPL sites, because the typical waste site contains an unclassifiable combination of mixtures. Some materials will have entered the sites in an amorhous state by virtue of the complex manufacturing process from

which the wastes emerge. Other unusual materials may form in situ at the site when industrial wastes cross-react or are transformed by microorganisms into new compounds. Scientific knowledge about the health effects of these more unusual chemicals is fragmentary. Even more important with regard to waste sites, however, is the paucity of scientific information about the hazards of mixtures of individual substances even when the health threats of each compound singly are known. Very little is known about the cumulative effects of exposure to subthreshold concentrations of each of a variety of toxins. In particular, we are relatively ignorant of the possible synergistic effects of combinations of substances wherein chemical or biological interactions make the hazard of the mixture greater than the sum of the individual hazards.

The Government writes that report, and then the Government comes in and says, well, let these citizens who are harmed go into private court and prove cause and effect when their children die.

I just have one final question, Mr. Chairman, on an unrelated matter.

Mr. **Willard**. May I respond, Senator?

Senator **Mitchell**. Yes, sure, go ahead.

Mr. **Willard**. One of the points you make was that the proposed demonstration program would be for a limited amount of money, $30 million per year for an initial 5 to 10 sites to be designated. However, the standards for eligibility under the program, once fully implemented, would be much more costly. For example, the Black Lung Program was originally supposed to cost $40 million a year, about the same amount of money, and is now costing about $2 billion a year.

We have heard earlier today from Senator Domenici and from Senator Bentsen about the difficulty of raising the taxes to fund the proposed Superfund expansion at its $5.3 billion level much less if there is tacked onto that an enormous entitlement program to provide medical benefits and lost income benefits to people who may be associated with toxic exposure. So, what we see is a very expensive entitlement program being created from this small demonstrated program that would place great pressure on the financial resources that, as you have already noted, are now under great pressure.

Senator **Mitchell**. Well, help us draft tighter laws, then, instead of throwing up obstacle after obstacle and, after each one is disposed of, throwing up a new obstacle. What bothers me is the absolute total insincerity of the arguments that are being made. It is not as though you recognize there is a problem and you want to try to work together to solve it. It is as though you are trying to deny there is a problem and just throw up one road block after another. If you think that the eligibility requirements are not strict enough, then suggest some language to make them more strict.

Finally, I would say that the very purpose of a demonstration program is to permit us to gather empirical data on the scope of the problem, the amount that the claims would be, and how to deal with them. I have heard widely varying views on whether it is going to be another Black Lung Program as you have suggested, and all the administration witnesses use that example. Others have suggested it is far less broad than is believed. I hope the latter is true.

But we are never going to know. We are never going to know until we try to deal with what is a very real problem for thousands

of American families. The attitude that the administration takes is simply one obstacle after another. I find it very, very disheartening and discouraging.

I have other questions, but I will wait for another turn.

[The following letter supplements Mr. Willard's statement on the victim compensation issue:]

U.S. Department of Justice,
Office of Legislative and Intergovernmental Affairs,
Washington, DC.

Hon. Robert Stafford,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

Dear Mr. Chairman: At the Committee's February 25 hearing on the reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Acting Assistant Attorney General Richard K. Willard explained the Administration's position on the victim compensation amendment proposed by Senator George Mitchell. This letter supplements Mr. Willard's statement on this issue.

By way of overview, it is our basic position that the five-year $150 million victim compensation demonstration project proposed by Senator Mitchell would not long remain within the narrow bounds prescribed. This proposal would create a new entitlement program for the compensation of victims of injuries or diseases that potentially may be associated with exposure to any hazardous substance. If ultimately expanded nationwide, the cost of this entitlement program could vastly exceed the initial $30 million per year authorized by the amendment.

There would seem to be little to be gained from the proposed demonstration project. While it is possible that the federal and state governments could administer such a limited project, any such project would create an unavoidable appearance of unfairness. While individuals in a few areas would receive substantial benefits from this demonstration project, individuals living in thousands of other areas and suffering from the same disease would receive nothing. This inevitably would lead to tremendous pressure on the Congress to expand the project to a nationwide basis. Such pressure would be increaded by the fact that once compensation is provided to some people for injuries "not known to be unassociated with" exposure to particular hazardous substances, individuals at other sites will see this as an official finding of causation and demand similar benefits for similar exposures. Moreover, once the government accepts responsibility for providing medical and disability benefits for a certain group of individuals, it will be exceedingly difficult to terminate the benefits after the demonstration project expires.

As noted above, the standard contained in Senator Mitchell's amendment would permit an award of benefits if an illness or injury is "not known to be unassociated with" exposure to a hazardous substance. This is a totally open-ended standard, which would permit the award of benefits in countless cases where causation is doubtful or, in fact, nonexistent. Any causation requirement should be based on the traditional causation standard as it exists in tort law as well as in other administrative compensation systems that provide benefits for similar types of injuries or diseases, such as federal and state workers' compensation programs and the veterans' disability program. While such a causation standard would undoubtedly result in denial of benefits to some who believe that they have been injured as a result of exposure to hazardous substances, without such a standard the program would be grossly overinclusive, compensating many who have no legitimate claim.

Moreover, individuals harmed by exposure to hazardous substances have other avenues of recourse. State tort law, which has been rapidly evolving in the area of toxic tort in recent years, often can provide a remedy in hazardous substance cases. In addition, there is a full array of state and federal health and income maintenance programs, including social security, medicare, medicaid, veterans' disability benefits and workers' compensation, which currently provide benefits to those seriously injured. Yet, the Mitchell amendment would provide additional benefits to individuals suffering from certain diseases theoretically attributable to hazardous substances, while others with the same diseases would receive less.

The issue before the Committee, therefore, is not a simple, $150 million demonstration project, but rather, whether CERCLA should be expanded with the addition of a multi-billion dollar entitlement program for individuals exposed to hazardous substances. While we have no firm cost estimates at this time, the class of potential beneficiaries should the project be expanded nationwide is likely to be in the millions. Past experience with similar compensation programs, particularly Black Lung, suggests that the ultimate cost of administrative compensation programs tends to be far higher than initial estimates. In the case of Black Lung, expenditures rose from a dollar estimate of several hundred million over the lifetime of the program, to aproximately two billion a year.

As several senators noted at the hearing, the tax burden of financing CERCLA falls heavily on particular industries, and will most likely be increased in any reauthorization bill to meet the growing cleanup costs. To impose the added burden of an enormous victim compesnation entitlement program could raise these tax rates to extraordinary levels, far in excess of CERCLA's current cost.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General.

Senator STAFFORD. Senator Baucus, do you wish more time?

Senator BAUCUS. I just have one followup question.

Senator STAFFORD. All right.

Senator BAUCUS. Mr. Thomas, we were talking about the Surface Mining Control Act. It is a very technical question, but I want to clear it up in case there is a problem here.

The language of the bill basically says that—let's see, that is title I, section 101(b)(2)(A)—"resulting from extraction, benefaction, or processing of ores or minerals which are covered under the Surface Mining Control and Reclamation Act." As you know, that act regulates only coal, but that act also contemplates studies of other minerals.

My question is, does "covers" refer only to the regulation aspect of that act; namely, only coal, or does "cover" refer to studies also contemplated under that act? If "covered" refers to the regulation aspect only, then it is only coal, but if the word "cover" in your bill refers to the studies as well contemplated and provided for in that Act, we have a problem.

Mr. THOMAS. Senator, there are some specific provisions that that act could cover, reclamation beyond coal, beyond just study. There is a provision that the Governor could, if coal problems have been dealt with in the State, use the funds under the act for other problems from surface mining or for the surface conditions of underground mines. Additionally, there is an emergency provision in that act. However, our intent there was to deal with the very specific readings of that act. I think you are right. The majority of the act's purpose is coal, but there are a couple of provisions that allow it to go beyond coal. If the act was available to deal with that, then we would not deal with it under Superfund.

Senator BAUCUS. What are those two areas again?

Mr. THOMAS. One area has to do with the Governor's determination as to whether, in fact, the coal reclamation issue in the State has been dealt with satisfactorily and the funds would be available for other types of mining problems.

Senator BAUCUS. That is if a Governor terminated something? I don't understand. What action would the Governor take which would——

Mr. THOMAS. He would make a determination that they——

Senator BAUCUS. Oh, determination. I am sorry.

Mr. THOMAS. Determination, determination, that they had dealt with the coal reclamation problems in the State and the funds would be available then to move on to other mining problems in that State.

Senator BAUCUS. But if the Governor so determines, then you are saying that your language would preclude the availability of Superfund funds.

Mr. THOMAS. That is correct.

Additionally, there is a second provision that talks about emergency restoration, reclamation, abatement, control, or prevention. We also think that also would fall under that.

Senator BAUCUS. You put the Governors in a pretty tough position, then. Out in Montana, the Governor had to divert some funds because there was an emergency in the State to provide for tailing problems in Montana. It seems to me there is a problem then. We also have coal problems in Montana, too.

Mr. THOMAS. Right.

Senator BAUCUS. But you have to deal with things on an emergency basis sometimes. Some are more urgent than some others, even though they are both very significant for causing potential damage.

Mr. THOMAS. Right. the intent of what we were trying to get to, Senator, is, in fact, not to have two programs trying to do the same thing. We saw the Surface Mining Act had actually been passed to deal with a series of problems. The intent of our proposal was a narrow drafting so that we would not deal with them under Superfund if they could be dealt with under SMCRA.

Senator BAUCUS. I appreciate your responses. You have helped clarify the administration's intent. I think that is something we are going to have to deal with as we work with the bill.

Thank you.

Senator STAFFORD. Thank you, Senator Baucus.

We note Senator Simpson has returned. Senator Simpson?

Senator SIMPSON. Thank you, Mr. Chairman. I am sorry I had to leave. I want to thank you for having these hearings. I hope we can consider the administration bill right along with the bill from this committee and, of course, consider anything else that we have before us. That is the way you have always done it in the past and I am sure we will do it this time, too.

But I think this is a first here. This is the first time we have had a measure of this scope brought before our committee by this administration. I have often said that I had hoped they would have done this with the Clean Air Act. It the administration had presented a measure, we would have had less trial and tribulation.

Now we have this measure before us. It is very helpful. I appreciate what you are trying to do, Lee Thomas, and I think that you are a professional and we need that. We have needed that during this administration, and we needed it in the last administration. I happened to be here during some of that.

We don't need political zealots; we need pros, and you are it. I hope that we can focus on fact and not emotion as we get into Superfund. I hope we can rid ourselves of suspicion as to what you might be up to in your hidden agenda. I hope we can be realistic and responsive and incorporate some of the administration bill into a markup vehicle. That will be what I will hope to do and hope that my colleagues might see fit to embrace some of that, and we will find out as we present them, perhaps, in the form of amendments and win, lose, or draw, move on to see if we can't get a good bill.

Some of the things that concern me is how clean is clean when we are dealing with human health and the environment. You are never going to get to perfection. I deal with that often in nuclear issues. How safe is safe? I don't know, but you can reach the point of absurdity in all of those situations. I hope we try not to sap ourselves with zeal and high old drama as we deal with Superfund. It is not an election year now, and maybe we can settle down and try to do something thoughtful. I hope so.

I want to commend Senator Mitchell whom I have worked with, my staff is working with, as he is looking for some creative things in the area of victim compensation which is obviously going to be with us. I have had some very reluctant thoughts about that. Maybe we can work something out. We are working toward that pilot program on the State level; something in the way of funding on an annual basis rather than in an entitlement. Anyway, we are trying which is the way he does it and the way I try to do it, too.

Federal toxic tort, that is one that still escapes me, always will escape me, and it may not escape me when we vote on it, but eventually I will follow it around kind of like a hound of hell. We will see if we can't try to divorce that from our thought, because if we are ever going to get rid of causation when we see injury, then we have just distorted the entire tort system of tort law of decades in the United States. We do those things in the spirit of emotion and impatience, and impatience has wrought more goofy legislation in this place than perhaps any other thing, and we will learn that again perhaps as we deal with the farm bill this week.

So, we are not very good at that, and I am not either. I am not leaving me out. I respond to those things just like the rest of us, but I think that this is an important opportunity to deal with the real issue of Superfund. How do you take the stuff and clean it up? How do you get to the worst ones and clean them up, and spend money to do that, and make those who did it put up the money, either in a blend of feedstock or waste end or corporate finance, whatever? The Finance Committee is going to be considering some of those things. This is not our jurisdiction alone.

I just hope we can come up with something sound and not get diverted into recent tragedies around the earth that have appalled us all. I am pleased that you will be here during most of our markup activities. I think that is very important that you be here because I think at least on both sides of the aisle there is an element of trust in what you are trying to do. If you can't establish that, then we are all in trouble because then we will go back into the politics of it and I don't think we need that here.

I used up my 10 minutes, but I wanted to share those things. I like the idea of the scope. The scope of Superfund is the hazardous site and cleaning it up and getting it done. Sure, they are taking time to do, but if your timetable there is correct, you are going to make a significant impact during the rest of this administration, and I hope you are right there to do it.

I do have a question. How much time do I have, Mr. Chairman?

Senator STAFFORD. You have adequate time for a question, Senator.

Senator SIMPSON. One? I thought you were going to be generous and give me two.

Let me ask—I will double it up then. I heard one question this morning like that. It took 10 minutes to ask.

Senator STAFFORD. Well, you actually have about 4 minutes if you want to use it.

Senator SIMPSON. Four minutes, thank you.

Let me ask you on this area of contribution and joint and several liability. It will jumble in the course of capsuling this question. Could you explain why that approach was chosen over an approach that might allow apportionment as an alternative and maybe leaving joint and several liability as an alternative? Can you tell me how you got there?

Mr. THOMAS. Let me ask Hank Habicht from the Justice Department maybe to respond to that, Senator.

Mr. HABICHT. Thank you, Senator.

As I indicated earlier, joint and several liability is an extraordinary and a strong legal tool. The administration's approach to this tool is based on the fundamental premise that the best way to bring the private parties at these various sites together to do a lot of the work themselves is to place a great emphasis on enforcement, and particularly on settlements. This assumes that we are all in agreement that we need to move quickly on the most serious hazardous waste sites and focus on a quick, efficient, and effective response to those sites, and that is important to bring private resources to bear on the problem. In many cases, private parties can do the work more cheaply. Such work is not only an important adjunct to the program and one that we are counting on, but also one in which we have a great deal of confidence in moving ahead with these sites and getting the basic job of cleanup done.

Joint and several liability—the allocation of liability and the liability scheme—is not an easy question. I think you are absolutely right to bring it up as an important issue to focus on, in terms of who pays and in what form they pay. Our review of this issue, however, has shown that joint and several liability has been an effective tool, particularly because at many of these hazardous waste sites you are dealing with potentially hundreds of contributors where the evidence of exactly who contributed what is somewhat mixed. There are complex technical issues of what sort of chemicals are present there and how they move and so forth. It is a recipe for very costly and time consuming litigation and one which, if the Government were to be required to prove exactly how much someone contributed and what they contributed and how it moved for each individual defendant, would make litigation an extraordinarily costly and cumbersome process.

Senator SIMPSON. Well, now, this is the rest of the question then. On this question of transaction costs at sites, which is that lovely phrase which I guess refers to legal and other fees expended during the process, transaction costs, are we seeing the point that legal fees are greator than cleanup costs at some of those sites already? If that is so, is that a good use of our national resources, and what does it imply about the success of Superfund if that is happening?

Mr. HABICHT. Senator, I don't have the exact costs of the litigation. I think it is absolutely fair to say, and I feel strongly and I know it represents the administration's view, that litigation is not the most desirable way of resolving issues, but sometimes, to paraphrase Winston Churchill, it is better than the alternative, given the need to move quickly and the difficulty of coming to grips with who ought to pay.

I think, with regard to specific statistics, that we can and should pull those numbers together. The initial litigation has been——

Senator SIMPSON. I wish you would. If you would pull those numbers together, if you can show me where legal fees or transaction fees are greator than cleanup costs, then I would like to see those figures, because that is disturbing to me. It ought to go into things on the chart instead of my old profession. I think I would like to look at that.

I thank you, Mr. Chairman. I have some particular thoughts about your use of the miter model on hazardous waste ranking on mining sites which, I think, does not take into effect western mining and some things I think Senator Baucus discussed with you. They are some things that I am concerned with, too, and I thank you very much. I will submit those.

Thank you, Mr. Chairman.

[Responses to Senator Simpson's questions follow:]

1) The 301(a) Study produced by the EPA reports that approximately 30% of Superfund spending over the next decade will be aimed at "transaction costs" (legal and administrative expenses).

a) How did you arrive at your figures in that Study?

There appears to be some misunderstanding about the 30% of Superfund spending that in the question is called "transaction costs." These costs are not only legal and administrative costs. They include all the expenses other than payments to contractors and States for on-site removal and remedial response.

The figures cited in the CERCLA Section 301(a)(1)(C) study ("Extent of the Hazardous Release Problem and Future Funding Needs") were calculated through use of EPA's Superfund Budget Forecasting and Financial Flows models. A more accurate title for the section of the Forecasting model entitled Administration and Enforcement would be Administration, Enforcement, and Program Support. Removal and remedial support constitutes the largest component of the Program Support category and represents approximately 14% of total projected obligations over the next 10 years. Activities funded include initial site discovery and investigation, hazard ranking, NPL listing, laboratory analysis and related costs associated with sampling efforts, investigations of potential removal actions, technical assistance and training to States and other parties involved in removal and remedial actions, and program evaluation/control activities of the hazardous substance response program.

Work of the other Federal agencies also represents a significant portion of projected Program Support obligations. Work of the Department of Health and Human Services, Department of Justice, U.S. Coast Guard, and others is projected to require approximately 4% of total obligations over the next decade.

b) Please break down the legal costs and how you defined them?

Legal costs are considered to be a portion of the Agency's overall enforcement costs. Legal costs include the costs associated with:

- negotiations for privately financed response;
- development and issuance of administrative orders to compel responsible parties to respond;

- initiation and support of civil, criminal and cost recovery cases referred to the Department of Justice;
- cost documentation and assembly;
- expert witness consultation and testimony;
- case preparation and presentation by DOJ attorneys.

In addition, there are enforcement support activities which the Agency has included in its projections. These include:

- data collection and analysis (e.g., water and soil sampling, engineering and geological studies);
- report preparation;
- quality control and assurance, including chain of custody procedures.

Enforcement costs are expected to represent approximately 12% of total costs over the next decade. Litigation costs, as a subset of enforcement costs, are expected to decline over the next decade as the government and responsible parties endeavor to settle their differences outside of litigation. Now that the liability rules have been set, parties can focus their attention on remedy rather than on liability. Moreover, as remedies are reviewed on the record, the legal costs associated with challenging remedies will diminish. As for the support costs, these activities will be carried out even where there is no litigation. Many of the most expensive enforcement activities, such as data collection and review, quality assurance and control, and report preparation, will be carried out regardless of whether litigation occurs.

c) Please define administrative costs in that context?

The Administration component of Administration, Enforcement and Program Support consists of those activities contained in the Management and Support portion of the Agency's Superfund budget. Activities include Headquarters and Regional financial and administrative management, space, utilities and related expenses, ADP support, and costs of the Offices of the Inspector General, the General and Regional Counsels, Policy, Planning and Evaluation, and the Comptroller. Together, these activities are expected to consume approximately 2% of total Superfund obligations over the next ten years.

d) It is said that the Department of Justice and EPA maintain accounts for the billing of lawyers and other time measure expenses. Please describe any such system, where it is run, and what information it could provide?

EPA's Financial Management Division (FMD) maintains site specific accounts for each Superfund site in its Financial Management System (FMS). The FMS maintains a record of all EPA employee hours and associated salary that is charged to a Superfund site. Employees (both technical and legal) maintain bi-weekly timesheets of their site specific hours. These timesheets are the basis for records maintained in FMS. The FMS also maintains records of EPA employee travel associated with a particular site and site-specific contract obligations and disbursements.

The Department of Justice's Lands and Natural Resources Division (LNRD) receives Superfund money for litigation support of Superfund cases through an Interagency Agreement with EPA. LNRD allocates actual costs between the Division's regular appropriation and the Superfund transfer appropriation based on the level of effort expended by professional employees directly on cases. The Division's level of effort on Superfund cases will be determined by comparing Superfund case hours to total Division case hours. This information is maintained in the Division's Legal Time System. (Professional employees maintain weekly timesheets of individual case hours worked). The ratio of Superfund hours to total Division hours will be used to allocate a percentage of all Division costs (maintained in DOJ's payroll and accounting system) to the Superfund transfer allocation.

e) Do you have any information comparing administrative costs or legal costs faced by private parties and those of the government? If not, please suggest areas where such a comparison could be pursued and how it might be done?

The Agency does not have access to reliable information on the administrative costs or legal fees charged to private parties in Superfund actions. Any comparison of governmental and private party legal or administrative costs that might be conducted would require the availability of such private party data. Moreover, a comparison of legal costs is not likely to yield any meaningful data given the disparity between government and private legal fees. Given the limited resources available, however, the Agency makes every attempt to minimize its own legal and administrative costs.

f) Have any other parts of the government, in addition to EPA and the Department of Justice, studied the matter of transaction costs in the Superfund context?

We are not aware of any studies on the legal and administrative costs associated with litigation under Superfund. The GAO in its evaluation of the section 301(a) studies provided alternative program estimates which may have included alternative transaction costs. No other Federal agencies were consulted regarding specific "transactions costs" of conducting Superfund activities. Instead, an estimate was developed for all "Other Agency Support", based on the current (FY 85) support ratio.

g) Does the EPA or any other government office plan to monitor the issue of transaction costs in the future? Are you or anyone else planning to study ways in which such costs could be cut?

For cost recovery, budget, and management reasons, the government will, of course, continue to monitor its own expenditures. Further, like all Federal agencies, EPA is acutely aware of the need to effectuate savings wherever possible and takes every opportunity to do so. At present EPA does not have plans to monitor private legal costs relating to Superfund litigation.

In this connection, the Administration included several provisions in its Superfund bill to keep down legal costs. As noted above, the Administration hopes to keep down the costs associated with challenging remedies by providing for record review of remedial decisons. Similarly, by providing for contribution protection where parties settle with the government, the Administration hopes to promote settlements and cut down on the litigation costs associated with contribution actions. Furthermore, by providing for Section 104 consent orders, the Administration hopes to encourage responsible parties to undertake investigations and feasibility studies without litigation. Finally, the Administration consciously decided not to include a citizen enforcement or federal cause of action in its bill, in part out of concern that such provisions might foster substantial litigation that is not related to site cleanups.

2). In motions filed in the Conservation Chemical case, it was recently suggested that pre-trial litigation costs alone would exceed the projected clean-up costs.

a) What does this suggest about the operation of the Superfund?

Total government expenditures for investigations, administration, enforcement, and litigation in the Conservation Chemical case as of February 1985 are $2,028,608.63. At eight and three-eighths percent interest, the present value for 30 years' operation of the government's preferred remedy in that case is $29,522,000.00. Thus, government expenditures amount to approximately seven percent of projected cleanup costs.

In a motion filed by a third party defendant, pre-trial costs for third party defendants in the Conservation Chemical case were estimated at $4,816,000 to $11,682,000. These speculative, unverifiable estimates range from 16 to 40 percent of projected cleanup costs for the government's preferred remedy. The underlying premise of the question - that pre-trial litigation costs will exceed projected cleanup costs - is correct if at all only in relation to the costs of certain remedies that have been proposed by the defendants and which the government believes are not adequate.

Moreover, the high litigation costs associated with this case are due largely to the actions of the defendants, not the government's conduct. In this case, the government sued a limited number of parties for complete cleanup of the site under the theory of joint and several liability. The government determined that the parties sued are responsible for at least 80 percent of the waste by volume at the site, and for the most hazardous waste at the site. As you know, the CERCLA enforcement provisions, Sections 106 and 107, do not prevent PRPs that are defendants from impleading others as third party defendants. While we agree that contribution actions, following the government's case, may be appropriate, impleading numerous third parties has been used by some PRPs as a strategy to delay the resolution of the government's suit in which they are named as defendants. This strategy increases litigation costs by forcing the smaller generators to participate in the government's litigation even though their ultimate share is too small to warrant such costly participation. As a result many third party defendants have complained to Congress.

Section 202 of S.51 (section 202 of S.494) would amend section 107 of CERCLA to clarify that contribution actions may be heard only after a judgment or good faith settlement is reached. This amendment would certainly expedite and reduce costs in such cases as Conservation Chemical.

Furthermore, the Agency's current policy of negotiating for the remedial investigation and feasibility study prior to initiating litigation and initiating such litigation only after the conclusion of the RI/FS and identification of the appropriate remedy will conserve resources of all parties. It is estimated that over a year of fruitless negotiation on identification of the appropriate remedy in Conservation Chemical could have been saved under this policy.

b) How many other cases have or will involve transaction costs approaching the level of clean-up costs? What is the usual ratio of transaction costs to clean-up costs to date and what do you anticipate in the future?

The Agency has not yet conducted any studies or analyses of comparative legal and other costs in the CERCLA litigation context, and cannot provide a usual ratio of such costs to cleanup costs. However, the Agency believes that its enforcement related costs are not a significant portion of the total response costs. The Agency is not aware of any cases in which government's enforcement costs approach the level of cleanup costs. With regard to the legal costs of defendants, the Agency lacks sufficient data to formulate an answer. In all events, however, conclusions should never be drawn from a single case. The government may be forced to litigate in certain cases when the parties will not settle, or when for precedential reasons the government must pursue the case. Any evaluation of legal costs should take into account the entire enforcement program.

c. Some suggest that the transaction costs of such cases will decline as greater experience with this type of litigation is achieved. Do you accept this argument? If so, please outline specific areas where you anticipate declines in such costs. Also, outline specifically the experience since the enactment of Superfund, showing any areas where transaction costs are declining.

For the reasons noted, it seems quite likely that enforcement costs will decline as experience increases. In particular, less litigation will be needed concerning the specific legal rules governing responsible party liability, for these rules are now relatively well established. Litigation costs, however, are but a small percentage of total cleanup costs. Certain costs, such as contract management and technical support, are more fixed than variable because they are necessary expenditures whether a case is litigated or resolved in an alternative manner. As noted, however, the Agency has not yet conducted any definitive studies or analyses of transaction costs.

d. Some suggest that the transaction costs are high because of concern over joint and several liability and the potential for ruin that even some small contributors might face at a given time. Please respond to this industry argument.

EPA is not aware of any evidence that supports the suggestion that transaction costs are increased by the existence of joint and several liability under Superfund. As EPA and the Justice Department have noted in the past, joint and several liability facilitates the settlement of Superfund cleanup litigation and provides an incentive for private parties to cooperate among themselves in settling such lawsuits. Accordingly, joint and several liability, if anything, reduces transaction costs.

While some have suggested alternative schemes of liability, the government is concerned that an alternative scheme of liability is likely to result in a more complex, resource intensive, and costly enforcement process for both the government and responsible parties. For example, the delay associated with apportioning costs in advance of judgment or settlement is potentially so great that the government may be forced to undertake the cleanup itself in most instances. This is because each party at a multi-party site would have both the ability and incentives to litigate its own separate share of liability against the Government.

In addition, the current scheme of joint and several liability encourages responsible parties to negotiate and coalesce and to develop consensus positions. Many responsible parties currently prefer to settle with the government for cleanup or costs, due in part to the existing potential joint and several liability. Those settlements may not occur if responsible parties are confident of limited liability in a Section 106 or cost recovery action.

Moreover, an alternative liability scheme could place a tremendous burden on de minimis parties in regard to factual showings. De minimis contributors may not be able to afford the costs of collecting the data and evidence needed to establish their shares.

3) In your discussion of Superfund reauthorization, EPA has emphasized the need for rapid clean-up as a primary goal. You have also suggested that anything that slows clean-up, no matter how well-intended, could inadvertently increase the risk to public health that led the nation to decide to undertake the Superfund in the first place. Please discuss any studies you have on the matter of increased public health risk from delay of clean-up, or any other information supporting your view. In particular we would be interested in any quantitative evaluations of the matter.

EPA has not done studies of the increased public health risks due to delays in Superfund cleanup activities. However, we realize that if delays in removal or remedial activities at certain sites do occur, it could potentially result in increased public health risks.

EPA's highest priority is to respond to threats to public health and the environment posed by uncontrolled hazardous sites and spills of hazardous substances through our Superfund removal program. Early and expeditious removal actions by EPA at sites on the National Priorities List can reduce, by many months, exposure resulting from active releases, or avert exposure from potential releases in order to protect public health and the environment. Additionally, we perform removals at non-NPL sites to abate immediate threats from hazardous substances and pollutants or contaminants through surface cleanups and other quickly implemented response measures. In the remedial program, we are rapidly moving sites through the planning process to produce timely, good quality remedial investigations and feasibility studies, that will facilitate the design and construction phase. A discussion of EPA's plans for further streamlining the CERCLA program to facilitate more rapid cleanups is contained in the preamble to the proposed National Contingency Plan revisions published in the Federal Register on Febuary 12, 1985, on pages 5863-5870.

4) How long does it take to litigate to judgment and to actual recovery of final judgment in cost recovery cases? Give examples related to actual cases?

Discussion of Superfund site cleanup activity and associated cost recovery of those cleanup costs should distinguish between NPL and non-NPL site activity.

Non-NPL site cleanup generally refers to emergency or immediate removal actions which are authorized under section 106 of CERCLA. EPA maintains, as a general policy, that cost recovery actions for these removal actions are to be initiated after the emergency response action is completed and total site costs can be calculated.

Recovery of the cost of response activity at NPL sites is somewhat more complex. Responsible parties have an opportunity to participate in or conduct the RI/FS, leading to the choice of remedy, subject to Agency oversight. It is EPA policy not to initiate cost recovery action or negotiations with responsible parties to undertake the actual site cleanup until a Remedial Investigation/Feasibility Study (RI/FS) has been completed. After the RI/FS has been completed, negotiations for Remedial Design/Remedial Action (RD/RA) will be initiated. These negotiations would include the recovery of costs incurred at the site to date. If negotiations are successful, the Fund will be reimbursed for costs incurred to date and the responsible parties will undertake the RD/RA. If negotiations are unsuccessful, Fund financed RD/RA would proceed. In the meantime a civil action would be pursued by the Agency to recover costs incurred at the site.

The following chart depicts, for several cost recovery actions, the length of time between completion of the removal action, referral of the case from the Regional Office to EPA Headquarte and settlement of the case. Virtually all Superfund cases eventually settle.

SITE	REMOVAL COMPLETION	REFERRAL TO HQ	SETTLEMENT
Diamond Alkali[1]	6/83	9/84	1/85
Lenoir	10/82	3/83	4/84
Dreyfus St.	10/81	4/82	1/85
Plastifax	6/82	9/82	6/84
Nickel Solution	4/83	9/83	7/84
American Surplus	4/82	9/82	6/84
Petro Processors[2] (NPL)	6/81	6/82	2/84
A & F (Greenup)[3] (NPL)	5/82	1/83	6/84

[1] Sampling initiated. [2] Site inspection. [3] First Fund removal completed.

5) What is the ratio between EPA/DOJ legal and administrative costs and actual amounts ultimately recovered in cost-recovery cases?

Each year, DOJ receives from the Fund a specified sum to conduct Superfund litigation. DOJ receives this funding pursuant to an interagency agreement with EPA. The following amounts have been billed to the Fund pursuant to these agreements:

FY 82: $ 1.168 million
FY 83: 2.654 million
FY 84: 3.071 million
FY 85: 5.020 million (agreed to be transfered to the Department)

As the cost recovery and injunction statistics set forth below reveal, our estimated recoveries from litigation have been substantially greater than the amounts received from the Fund for litigation. Our combined recoveries under CERCLA sections 106 and 107 and RCRA in terms of dollar amounts and the estimated value of the removal and remedial actions achieved through judgments and consent decrees have been as follows:

FY 82: $57 million
FY 83: 62 million
FY 84: 119 million

These amounts, totalling almost $240 million, clearly indicate the overall cost-effectiveness of the Administration's enforcement program and the success of the enforcement program in providing an incentive for responsible parties to reach agreement with the United States on their potential liability under CERCLA and RCRA.

The following chart presents a sampling of cost recovery settlements with the amount recovered, the amount of administrative costs incurred and the amount of DOJ litigation support costs. For the purpose of this chart, administrative costs include all EPA payroll charged to the site (both technical and legal), and all travel charged to the site.

SITE	AMOUNT RECOVERED	ADMINISTRATIVE COSTS	DOJ COSTS	COST AS A % OF RECOVERY
Diamond Alkali	$1,835,600.00	$36,148.49	-	1.9%
Lenoir	113,000.00	18,927.33	6,121	22%
Dreyfuss Street	259,600.00	15,749.76	27,770	16%
Plastifax	226,369.00	16,381.72	3,338	8%
Nickel	199,500.00	23,917.23	1,841	12%
American Surplus	138,400.00	22,378.34	7,283	21%
Petro Processors	600,000.00	73,524.79	183,884	.5%
	(50,000,000.00	remedy to be conducted by defendants)		
A&F (Greenup)	490,000.00	50,499.86	195,646	5.5%
	(4,000,000.00	remedy to be conducted by defendants)		

6) What is the time frame that you envision, in cost-recovery actions, between initiation of litigation to the actual beginning of cleanup in the coming years? How does this compare with the experience to date?

> The time frame for enforcement action is set out on the following chart. We currently estimate approximately six months for case development, and a year to two years for litigation, depending on the complexity of the litigation.
>
> Litigation in some cases to date has taken longer than these time frames contemplate. This can be attributed to the fact that, for many early CERCLA and RCRA 7003 cases, litigation was initiated before remedial investigations and feasibility studies were conducted. The government sued responsible parties before the appropriate remedy had been identified, thus increasing the complexity of the issues potentially subject to litigation. In addition, many issues were negotiated in the course of litigation. Under the current process, there are a number of opportunities for negotiations with responsible parties prior to the initiation of litigation. These changes shorten the time needed for litigation, and increase the likelihood that negotiations will be successful, thus reducing the need for litigation.
>
> In cost recovery actions, cleanup is initiated before litigation. Agency policy is to initiate action to recover costs as soon as practicable after the Agency chooses the appropriate remedy for the site and develops its Record of Decision.

I	II	III	IV	V	VI	VII
PRELIMINARY ASSESSMENT/ SITE INVESTIGATION	NPL LISTING	RESPONSIBLE PARTY SEARCH	NOTICE LETTER ISSUANCE	RI/FS DEVELOPMENT	NDD/DRAFT ROD	RECORD OF DECISION ON REMEDY
	60 days public comment	ASAP after it is determined that site will be proposed	At least 60 days before RI/FS is obligated	Approx. 18 months	60-120 days	

VIII	IX	X	XI
CASE DEVELOPMENT	LITIGATION	DESIGN	CONSTRUCTION
6 months	1/2 cases: settle 1/4 cases: 1 year 1/4 cases: 2 years	9 months	1 year

7) How many National Priority List sites involve cost recovery litigation?

Case referred to EPA headquarters:	4 NPL
Cases referred to DOJ:	17
Cases Filed:	49
TOTAL	70 NPL sites

8) Please provide specific numbers (and any accompanying assumptions) of the comparative cost if EPA provided money immediately for cleanup at remedial sites as soon as the cleanup plans were complete, rather than after litigation. Assume for this purpose that there are no costs for litigation whatsoever. Also provide information as to the amount of time that would be saved.

Specific numbers on comparative costs are not available. Generally, the remedy for Fund-financed cleanup is the same as the remedy for private party cleanup. Therefore, the costs should be the same, except as adjusted for inflation and for the costs of litigation. We note that if a Fund-financed remedy is initiated, litigation costs will eventually be incurred in a cost recovery action.

The time potentially saved by proceeding with Fund-financed cleanup varies with the complexity of the litigation. The Agency currently assumes six months for case preparation, and one to two years for litigation. We anticipate that many of these cases will be settled before litigation proceeds to completion. More details on the timing of the enforcement process are set out in the answer to question 6.

9) Please suggest any areas of improvement in the CERCLA statute or its implementation that could/will lead to reduced transaction costs. Also state what EPA believes to be an "acceptable" level of transaction costs in this area, given the other resource needs of the Agency and the nation. Please be specific in your answers and assumptions.

As set forth in the section-by-section analysis accompanying the Administration's bill, the Administration proposed several changes to the statute which the Agency believes will minimize legal costs. One is the contribution amendment in S.51. and S.494 Section 202 (Section 202 of S.494) clarifies the existing law governing liability of potentially responsible parties in three respects:

- Parties found liable under section 106 or 107 will have an express right of contribution, allowing them to sue other potentially responsible parties to recover a portion of costs paid by the liable parties. While this may lead to some litigation, it is the Agency's view that this provision will encourage settlement by putting all parties on notice, whether sued by the government or not, that they may be held liable for their share of the cleanup or cleanup costs.

- Parties who reach a good faith settlement with the government are not liable for contribution claims from other liable parties. This provision will clearly limit litigation, by ensuring those who settle with the government that they are protected from additional litigation on cleanup costs.

- Contribution actions may be heard only after a judgment or settlement in good faith is reached with the government. This should limit the litigation costs of those parties not sued by the government and focus the government's case on remedy rather than liability. It is also the government's view that by postponing the hearing on contribution until after the government's case, the parties will settle without having to litigate.

In short, it is the government's view that these provisions will limit litigation costs by:

1. providing a greater degree of finality to settlements reached between EPA and responsible parties; and

2. expediting private party cleanup through simplification of the process of litigating imminent hazard enforcement actions.

The Agency also believes, as noted above, that the provision relating to record review of remedial decisions will help to minimize legal costs, by focusing the court's and the parties' attention on the facts before the Agency at the time of the remedial decision.

Finally, the Agency is considering additional proposals to further encourage settlements and thereby limit legal costs. Indeed, it is the Agency's view that the debate on joint and several liability is misfocused. The real issue is how to improve the Agency's settlement flexibility to take care of many of the concerns that are now incorrectly aimed at joint and several liability. In this regard, the Agency is considering language that will enable the Agency to settle small cost recovery cases outside of a litigation context.

The Agency is also considering proposals that would give the Agency authority to use Fund money to make up certain differences in settlements. As soon as these proposals are finalized they will be forwarded to you and the Committee.

10) What is the status of EPA's study of the MITRE model and its "bias" toward mining site inclusion on the NPL that some have suggested? What are the specific purposes of the study? What conclusions will the EPA be better able to make as a result? What are the dates and deadlines it is on?

As you may know, EPA is currently reviewing the assumptions and technical data relevant to the Hazard Ranking System (HRS) in light of the data collected by the Superfund program over the last several years. In addition, we have carefully reviewed the report prepared by TRC Environmental Consultants for the American Mining Congress (AMC) which asserts that the HRS is biased against mining sites. The Agency's findings regarding the TRC/AMC report are that the report contains a number of errors, that the statistical techniques used were incorrectly applied, and that their findings are unsupported within the report. An example would be their contention that releases at mining sites are more easily observable than at other sites, when, in either case the observed releases are based on field sampling and laboratory analyses. Expressed differently, the "findings" are simply opinions lacking any scientific or technical basis as far as we can discern. EPA's detailed critique of that report is undergoing final Agency review, and we should be able to furnish you a copy shortly.

While we would reject the contention that the HRS is unfairly placing mining sites on the NPL, we believe that it may be possible to improve the way the HRS handles mining and non-mining sites. With five years of experience now in site investigations, the Agency now has a large body of data to use in reviewing the scientific basis for the HRS. Examples of the areas we are examining include the potential for air releases (the HRS currently only addresses observed releases for air), aquatic food chain contamination, geochemical attenuation of pollutants in ground water, and mechanisms for considering the concentrations of hazardous substances involved. What we are doing is the basic scientific and technical analyses that are prerequisites to proposing changes in the HRS, and we expect to conclude some of those analyses by the end of summer. At that time we will decide whether revision of the HRS is warranted in light of the costs (e.g., additional data collection costs) and potential benefits of such revisions.

Senator STAFFORD. Thank you, Senator Simpson.

Senator Mitchell?

Senator MITCHELL. Thank you, Mr. Chairman.

Senator STAFFORD. Before you begin, Senator, could I just ask Mr. Thomas how his time constraints are? Can you stay a while longer?

Mr. THOMAS. Yes, sir.

Senator STAFFORD. All right. Thank you.

Senator Mitchell?

Senator MITCHELL. Well, because he has been here a while and we are very appreciative of that, I will be brief, Mr. Chairman, and I will submit other questions in writing, but I just did want to ask a couple more.

Senator STAFFORD. Sure.

Senator MITCHELL. And I thank you, Mr. Thomas, for your patience in staying here today.

Just to conclude our discussion on the subject to victim compensation, I want to say that I am very much aware of the problem of creating a new program that would be subject to abuse or that would grow far beyond anyone's expectations and, the need, especially at a time of budget restraint, to act in a prudent manner. That is one of the reasons why we worked so long and hard. It has been several years now to try to devise a means for doing that, and we are now working in good faith with Senator Simpson and his staff. I earnestly and sincerely invite representatives of the administration to participate in that effort. It is the totally negative approach that I find most discouraging about the process, and unwillingness to even try to address it in a serious way. I hope that we can do that.

It may be that we cannot succeed. It may be that there is no common ground. It may be that we are unable to devise any legislation that can accomplish the goals that we share. But I hope that an effort will be made, because it is a very serious problem.

I would like to ask you, Mr. Thomas, as you know there has been some discussion recently about the difficulty of obtaining insurance being encountered by firms involved in hazardous waste disposal as well as those involved in cleanups. I have discussed this problem with you before. Could you describe the recent agreement that EPA entered into with Clean Sites Inc., a private corporation which I understand indemnifies it in certain—is it some sort of agreement to indemnify it in certain cleanup situations?

Mr. THOMAS. Senator, the issue of insurance, as we indicated earlier, is a major concern to us as it is to members of this committee, particularly the availability of environmental impairment liability insurance for nonsudden events as required under RCRA, the availability of insurance generally, particularly as it relates to hazardous substances or hazardous waste. As you and I discussed earlier, we have seen the availability of that insurance shrink dramatically over the last number of months, and we are trying to fully explore just what are the causes and what are possible solutions to this problem with the insurance industry.

Clean Sites Inc., as I am sure you are aware, was a nonprofit operation that grew out of an effort between certain environmental interest groups and industry interest groups to determine whether there was something that could be done in the private sector to deal with the site cleanup problem beyond what we were doing in Government, or what was being done by private sector alone. Out of that came a recommendation for a pilot effort which, in turn, became known as Clean Sites Inc., the entity that was established.

That group is to undertake a number of activities, including coalescing of responsible parties at a particular site, the provision of technical resources and technical assistance in trying to determine how to clean that site up.

As far as the Government is concerned, we would enter into an arrangement with firms that Clean Sites was working with just as we would with any other firm if we became involved with them. That would be through a formal arrangement. In other words, if those firms wanted to clean up a site, we would either have a consent decree or a consent order with those firms to proceed with it.

Where Clean Sites ran into problems was in that early stage where they were working with a few firms to try to coalesce the group to try to come to grips with what the problem was, to try to develop a proposal for cleanup up the site. They found that, because of their mission and because of their relative newness, they were not eligible for any insurance, either for their employees or for their members, that would cover actions that they took that could result in litigation at some later date because of claims that their action was either inappropriate or caused, directly or indirectly, some harm.

We think the possibilities of that happening would probably be fairly small, but it was certainly a real problem that they faced. We felt they were a unique group whose purpose was a meritorious purpose. They came to us as we reviewed the issue. We did draft a narrowly defined agreement as to how we could indemnify them on a case-by-case basis. If they were initiating an action at a site where we approved of the action, we would only indemnify them for that action up to the point where responsible parties were identified that would take action at that site. At the point, it would be the responsible parties that would have to cover their liability, not the Government.

So, in a narrowly drawn set of cases on which we worked with the Justice Department in crafting, and on a site-by-site basis, and in addition to any insurance that they would have to maintain, whatever was available, we indicated that we would indemnify in that narrow range. We felt that that was something that was important for us to do, given the potential benefit that could accrue from that pilot effort.

Senator **Mitchell**. Would you, at your convenience, have your counsel submit a letter describing the agreement in writing and the legal basis on which the EPA entered into it, that is, what the basis was for entering into it?

Mr. **Thomas**. We would be pleased to do that. (See p. 116.)

Senator **Mitchell**. On the subject of insurance, I understood Senator Bentsen to say earlier that because of developing problems in this field, the number of State court decisions which give rise to concern among insurers, I am familiar with some but not all of them, he has suggested that there be hearings after this committee acts on the bill but before the Finance Committee.

Mr. Chairman, I would like to say that I share that view and I think it is something we should look into. This is, obviously, a growing problem and one with which we must be concerned, because we can do whatever we want here, but if there are developments in the insurance field as the result of several State court decisions, I think we should be aware of them and be prepared to deal with that.

Senator **Stafford**. I have made the statement that if the insurance industry concludes that they have something they would ask us to consider—they did not have last week—that we would hold hearings and if the committee agreed on some action, we would take it to the floor as a committee amendment.

Senator **Mitchell**. I just have a couple other questions, Mr. Chairman, and what I would like to do, Mr. Thomas, is just ask the questions and then ask you to submit responses later. I don't want to tie you up any further and I know the chairman and Senator Simpson need to go as well.

I would like to ask you to explain why the administration is proposing to modify the health authorities provision of the legislation. As you know, you have proposed to make discretionary the provision of health assessments as hazardous waste sites, to remove the requirement of current law that the Agency for Toxic Substances and Disease Control establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances, and you would propose to remove the current requirement that, in cases of public health emergencies, that agency provide medical care and testing to exposed individuals. That would no longer be mandatory; it would be discretionary. I would like to have you explain and justify those proposals and also indicate what, in your view, the impact of these changes would be on the current activities of the Agency for Toxic Substances and Disease Control.

Mr. **Thomas**. Senator, we will be glad to respond to that in writing. I can assure you we in no way want to diminish the kind of attention we have been providing with CDC to health related issues, and we are attempting to try to clarify existing policy between the agencies.

Senator **Mitchell**. You have also made a number of proposals to modify the EPA's response authority under the legislation. I would like to ask you if you would just please describe the responses EPA has made over the past 4 years under the current law which would not be possible if the administration's proposal became law as one category, and in a second category, responses which, in your judgment, could have been made under the current law in the past 4 years but were not and which would also not be possible in the future and the reasons for the suggested modifications.

Mr. **Thomas**. Will will do that, Senator. I don't believe any of the responses we made during the last 4 years would be excluded by that proposed language, but we will respond to those in writing.

Senator **Mitchell**. OK, fine. I thank you very much.

Thank you, Mr. Chairman.

Senator **Stafford**. Thank you, Senator Mitchell, and thank you, Mr. Thomas. We will see you on Thursday and Friday.

Mr. **Thomas**. Thank you, Senator.

Senator **Stafford**. The committee stands adjourned until 10 a.m. tomorrow.

[Whereupon, at 12:33 p.m., the committee recessed, to reconvene at 10 a.m., February 26, 1985.]

[Statements submitted for the record, responses to Senator Mitchell's questions, and the bills, S. 51 and S. 494 follow:]

STATEMENT OF
LEE M. THOMAS
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
FEBRUARY 25, 1985

Mr. Chairman and members of the Committee, it is a pleasure to appear before you this morning. I am here to honor a pledge I made last year, to submit to you early in the 99th Congress this Administration's proposal to reauthorize the Comprehensive Environmental Response, Compensation, and Liability Act -- the Superfund.

We have learned a great deal about the problem of uncontrolled hazardous waste sites since Congress first enacted Superfund just over four years ago. Much has been accomplished using the authorities of the original law. Based on our first-hand experiences, as well as our vision of the problem that remains, it is time now to renew this program.

Let me say at the outset that implementation of Superfund is the Environmental Protection Agency's highest priority. Its reauthorization is my own top legislative goal. I will work closely with members of this Committee to extend and improve this vital statute.

The legislative proposal we are considering today has the full backing and support of President Reagan as is evidenced by the fact the President himself transmitted the legislation to you. As you know, the President again endorsed Superfund reauthorization in his State of the Union Message earlier this month.

Since 1983, we have made substantial progress in implementing the Superfund law. Long-term work is underway at hundreds of sites around the country. At hundreds of others, we have completed emergency cleanups and eliminated immediate threats to human health and the environment.

The charts before you summarize our progress to date. In a moment, I will provide you with a thorough briefing on where we have been under Superfund and where we are going.

Despite our progress, however, much remains to be done. We must take all steps necessary to assure that we do not lose our momentum. The legislation we present today is designed to build upon that momentum. It will allow us to get the cleanup job done as quickly and completely as possible.

Overall, this legislation will give us the tools we need to continue implementing Superfund at the accelerated pace we established during the past two years. Our proposal:

o Triples the resources available for cleaning up hazardous waste sites.

o Focuses those resources on the most serious problems.

o Strengthens our enforcement capabilities and ensures that responsible parties pay for and conduct more cleanups.

o Enhances the roles of both Federal and State governments in undertaking response action.

o Guarantees a meaningful role for affected citizens in selecting cleanup options.

o Assures an adequate, stable, and equitable financial base for the program.

The $5.3 billion program we propose today, coupled with an aggressive enforcement effort, will yield dramatic results during the second five years under Superfund. By the end of fiscal year 1990, we project engineering studies -- the first step in the full cleanup of a priority site -- will have been started at nearly 1,500 sites. Actual construction will be underway or completed at more than 900 sites. In addition, by the end of fiscal year 1990, emergency cleanup actions at over 1700 sites will have been undertaken.

This legislation is the product of months of intensive effort on the part of the executive branch. The bill we offer is a consensus document reflecting this Administration's view of one of the most pressing environmental issues facing this nation.

I have personally played a leadership role in preparing this package. I will continue to be involved in the reauthorization of Superfund.

While I am completely comfortable with the legislation we present today, I will be candid with you. It raises some difficult issues with which Congress must grapple. It recognizes and respects our experiences to date, and suggests statutory changes to allow us to proceed more effectively with the original challenge of Superfund. It modifies the taxing mechanism in an attempt to provide the resources we will need to continue getting the job done.

The Response Program

There can be no doubt that the public recognizes Superfund as government's primary tool for addressing environmental and health threats posed by abandoned hazardous waste sites. Indeed, the legislative history of Superfund centers on "inactive," "uncontrolled," and "orphan" hazardous waste sites.

However, response authorities in the present law are much more sweeping in scope. They have the potential to dilute our scarce Superfund resources among non-site-related releases, situations posing minimal public health threats, and other circumstances.

Our proposal focuses those resources on sites that pose the most serious potential threat: uncontrolled and abandoned hazardous waste sites; municipal and industrial waste disposal facilities; sites regulated under the Resource Conservation and Recovery Act but held by insolvent firms; and spills and other releases of hazardous substances. In addition, the bill permits the President to take action at any site where the release of hazardous substances poses the threat of a major public health or environmental emergency and authorities or capabilties do not exist for response in a timely manner. In focusing our attention, we establish a more concerted effort to clean up what we feel are the most dangerous sites in the nation.

In addition to clarifying the scope of response under Superfund, our proposal would improve and expedite cleanup in several ways. It better defines health-related authorities and the agencies responsible for implementing them. The bill authorizes the establishment of benchmark cleanup standards for short-term and long-term actions. And it provides limited protection for cleanup contractors against claims for future response costs arising out of the work they perform for us.

The Enforcement Component

The enforcement provisions of this bill are critically important to our overall success in carrying out the second phase of Superfund implementation. During the past several weeks, I have been a visible and vocal proponent of aggressive enforcement stances in all EPA programs.

Enforcement was a major theme of my confirmation testimony before this Committee less than three weeks ago. Under Superfund, this bill gives us the opportunity to turn our words into substantive tools capable of yielding results.

As we continue to emphasize Superfund enforcement, we are proposing a series of statutory changes in our bill which, taken together, will help ensure that responsible parties play an increasingly important role in cleaning up hazardous waste sites. These changes should be viewed within the context of our continued reliance on the strict, joint and several liability of responsible parties at Superfund sites.

Our bill would:

o Increase all criminal penalties to $25,000, all civil penalties to $10,000, and create civil penalties to augment criminal sanctions where they do not already exist.

o Expedite civil actions by requiring that separate suits be brought against other potentially liable parties for contribution after judgment or settlement in enforcement actions.

o Clarify governmental access and information-gathering powers and establish the authority to enforce them.

o Preclude pre-enforcement review of selected response actions while maintaining safeguards against arbitrary and capricious selection of remedies or use of orders.

o Impose Federal liens for response costs upon all real property owned by responsible parties affected by an agency response action.

• Clearly establish foreign vessel owners' and operators' liability for releases from their vessels.

The above authorities will do a great deal to enhance our enforcement capabilities. This, in turn, will increase our ability to foster responsible party cleanups and to recover costs where site actions are paid for by the fund.

Aggressive enforcement will supplement the cleanup efforts we undertake using the fund. I expect responsible parties, responding to our tough enforcement posture, to sign settlements valued at between $400 million and $500 million during fiscal year 1986. That's three times the level of settlements for fiscal 1984, which was a record year in itself.

Private-party cleanups between 1986 and 1990 are expected to total approximately $2 billion. When coupled with fund-financed activities, this will effectively yield some $7.5 billion in total cleanup activity during that second five-year period.

Federal-State Relationships

A strong, clearly defined Federal-State relationship is also essential to the success of our Superfund program. Through carefully crafted administrative steps, we have delegated substantial decision-making authority to the states during the past two years. Our legislative package complements this trend and prescribes a greatly expanded role for the States.

The States would become increasingly active partners in making Superfund work. We offer them the opportunity to play a far more substantive role in managing actual site cleanup for both short- and long-term actions, and to have a more meaningful stake in the program's cost efficiency. We would also add clarifying language to the existing law allowing cooperative agreements between EPA and the States to cover more than one site. Enforcement costs would be included in these agreements.

New language would put an end to the current preemption of State superfund-like taxing statutes. States would be permitted to raise revenues dedicated to hazardous waste site cleanup activities without constraint by similar Federal statutes.

We also look for the States to take on a somewhat larger portion of the Superfund cost burden. We propose that the States pay for 20% of the cost of long-term cleanup at sites where the State itself is not a responsible party. This would be an increase from the current 10% cost-share. Similarly, we would increase the State share from 50% to 75% for cleanup at sites where the State is the site operator.

Community Involvement

Since coming to EPA in early 1983, I have been committed to a meaningful role for affected citizens in the decisions of the Superfund cleanup process. Although the current law does not address this essential element in the cleanup equation, I established a community involvement policy shortly after taking over the hazardous waste program.

That program, and the process of involving citizens in Superfund activities, has helped those affected by our work to understand our decisions. It has also helped us to understand the concerns of these citizens.

Our proposal would require that affected citizens be notified of proposed cleanup action. They would be given an opportunity to comment on the proposed action and any alternatives. The objective of this amendment is to ensure community involvement in long-term cleanup actions.

One thing I learned first-hand as head of the Superfund program for two years is the deep, genuine concern of citizens for the health of their families, the maintenance of their property values, and the protection of their environment. The public must know that this agency makes its decisions in the light of day, after considering all responsible viewpoints. This amendment will lend greater credibility to our efforts to clean up hazardous waste sites.

Financing

In the final analysis, realizing all of the goals we have set for the Superfund program will depend upon an adequate and stable financial base. We believe that a blend of taxes together with interest on the unexpended fund balance and cost recoveries will give us the resources we need to accomplish our mission.

About 90% of the $5.3 billion we project being generated by this mix of revenue sources over the next five years will come from taxes. One-third of these funds will be generated by feedstock taxes, while two-thirds will come from a waste-end tax.

The details of our legislation are set out in the fact sheet and the section-by-section analysis that I have attached to my testimony.

In closing, I want to stress again that our legislative proposal is a strong and balanced approach to the hazardous waste site cleanup problem that is before us. This bill will triple the resources available to us for cleanup activities, strengthen our enforcement capabilities to foster private-party cleanups, and focus all activities on those sites posing the greatest risks to human health and the environment.

I am proud to present this legislation to this Committee. The staff of many agencies have worked very hard putting it together. I urge you to consider its provisions carefully in crafting a bill to reauthorize Superfund.

Thank you very much.

SUPERFUND REAUTHORIZATION FACT SHEET

President Reagan transmitted to Congress February 22 the Comprehensive Environmental Response, Compensation and Liability Act Amendments of 1985. The bill would reauthorize Superfund for five years.

Summary of Key Provisions

o Resources: More than triples funds available for Superfund activities over current law. Existing law established a $1.6 billion trust fund through fiscal year 1985. The proposed reauthorization would generate $5.3 billion between fiscal years 1986 and 1990. Approximately 90 percent of these funds would be raised through a tax on petrochemical feedstocks and the management of all RCRA hazardous wastes (1/3 feedstock; 2/3 waste end).

o Scope: The proposed bill would concentrate EPA resources on hazardous waste sites. These are the sites Congress originally intended that Superfund focus on. The response program in the Administration's bill would address abandoned and uncontrolled hazardous waste sites, municipal and industrial waste sites with problems, and sites governed by the Resource Conservation and Recovery Act but held by insolvent companies. In addition, the bill includes a "safety valve" that enables the President to respond to any hazardous substance release that constitutes a major public health or environmental emergency.

o Enforcement: The proposed reauthorization contains several major changes in EPA's enforcement program. They are designed to ensure that responsible parties conduct and pay for more cleanups. Key enforcement provisions would:

--Increase all criminal penalties $25,000; all civil penalties would increase to $10,000. New civil penalties would be created to augment criminal sanctions where they do not already exist.

--Expedite civil actions by requiring that separate suits be brought against other potentially liable parties for contribution after judgment or settlement in enforcement actions.

--Specifically define governmental access and information-gathering powers and establish the authority to enforce them.

--Impose federal liens for response costs upon all real property owned by responsible parties affected by an agency response action.

It is expected that these new authorities will significantly supplement fund-financed cleanup activities. In fiscal year 1986, EPA expects responsible parties to conduct cleanup work worth between $400 and $500 million. Through 1990, we expect these cleanups to total some $2 billion, bringing the estimated value of all Superfund activities over the next five years to nearly $7.5 billion.

o State Responsibilities: The current law's preemption of state superfund-like taxing statutes would be eliminated. States will be able to raise revenues for their own cleanup activities. The proposal also promotes multi-site cooperative agreements and allows state enforcement costs to be eligible for funding. The states would be required to pay an increasing share of the cost of cleaning up sites. The state matching share for sites where the state is not a responsible party would increase from 10 percent to 20 percent. For sites where the state is the site operator, the state share would increase from 50 percent to 75 percent.

o Community Involvement: The proposal would make it a statutory requirement that affected citizens be notified of proposed cleanup actions. They would also be given the opportunity to comment on any proposed action and on alternatives. This amendment applies to all long-term cleanup actions, whether they are fund-financed activities or the result of enforcement action.

o Projections: As a result of these provisions, EPA projects that through fiscal year 1990, engineering studies will have begun at over 1,500 sites. Actual construction will be underway or completed at 920 sites. In addition, we will have undertaken emergency cleanup actions at 1,741 sites.

SUPERFUND REVENUES FACT SHEET

In designing a tax to raise revenue for funding the Superfund program, EPA sought to meet the following objectives:

- to provide a stable and predictable source of revenue;
- to broaden the base from which revenue is received;
- to minimize adverse economic impacts on industries;
- to impose the tax on the type of industries and practices that have caused the hazardous substance release problems Superfund was designed to address;
- to encourage a reduction in the quantities of hazardous waste generated and to discourage the management of hazardous wastes in surface impoundments and landfills.

EPA's proposed amendments to Superfund seek to raise approximately $5.3 billion to finance the program over the next five years (from FY 1986 to FY 1990).

EPA proposes to raise $5.3 billion from three sources:

1) Feedstock: A tax on crude oil and 42 petrochemicals and raw materials used in the production of chemicals that contribute to the hazardous substance release problem addressed by Superfund.

   The feedstock tax base and tax rates are the same as the current tax used to finance Superfund since 1980.

   This tax is designed to raise approximately $300 million per year over the next five years.

2) Waste-management: Revenues from the management of hazardous wastes. This includes a tax on all hazardous wastes received at a qualified (i.e., RCRA-permitted) treatment, storage, or disposal unit, as well as hazardous wastes disposed of in the ocean or exported from the United States.

   The tax would be imposed on the owners or operators of hazardous waste management facilities or vessels, and on exporters of hazardous wastes.

The tax is designed to encourage alternatives to land disposal by imposing a higher rate on the management of wastes in landfills, surface impoundments, waste piles and land treatment units. This provision will complement the 1984 amendments to the Resource Conservation and Recovery Act, which direct EPA to consider restricting certain wastes from land-based units.

This tax is designed to raise approximately $600 million per year over the next five years.

3) The remaining $100 million per year would be derived from interest on Superfund investments, from fines, and from costs recovered from parties responsible for hazardous substance releases cleaned up by Superfund.

Superfund is currently financed primarily by the feedstock tax identified above in this fact sheet and money from general revenues (12 percent). The current tax, the general revenues, and interest on the fund has raised approximately $1.6 billion to finance Superfund response activities since 1980.

SECTION-BY-SECTION ANALYSIS

EPA'S PROPOSED AMENDMENTS TO CERCLA

SECTION 1

Short Title

The short title of the legislation is the "Comprehensive Environmental Response, Compensation, and Liability Act Amendments of 1985" (CERCLA Amendments).

SECTION 2

Amendment to CERCLA

This legislation, which reauthorizes the Superfund program from FY 1986 to FY 1990, amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or "Superfund").

SECTION 3

Statement of Findings and Purposes

This section sets forth the findings and purposes of CERCLA. The major findings are that --

- Releases and threats of releases of hazardous substances continue to pose serious threats to public health and the environment;
- A major source of the hazardous substance release problem results from releases from uncontrolled hazardous waste facilities; and
- To protect human health and the environment, a comprehensive Federal program is needed. The program must include strengthened enforcement authority, a Federal-State partnership and expanded citizen participation for effective response to hazardous waste sites and releases or threatened releases of hazardous substances.

The objective of this section is to clarify Congressional intent that the focus of the Superfund program should be on responding to releases or threatened releases of hazardous substances from uncontrolled hazardous waste sites.

SECTION 4

Definitions

Section 101(14) lists those substances which are hazardous under CERCLA by reference to substances listed under five other environmental laws. Section 101(14)(C) includes as hazardous under CERCLA "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act ....".

This amendment would clarify that a substance need not be a "waste" to be considered a CERCLA hazardous substance under this subsection, so long as the substance meets the criteria of section 3001 of the Solid Waste Disposal Act.

SECTION 101

Authority to Respond

CERCLA section 104(a)(1) currently authorizes response action "unless the President determines that such removal or remedial action will be done properly by the owner or operator of the facility...or by any other responsible party." The amendment would clarify and confirm that the President has the discretion to decide when responsible parties are authorized to conduct cleanup in lieu of Fund-financed response.

This amendment is not intended to preclude or discourage responsible parties from conducting cleanup actions without the formal permission of the Federal government. The current requirements of section 105 of CERCLA (National Contingency Plan) contemplate a significant role for private parties in response actions.

The amendment is intended to clarify that the Federal government would not be precluded from conducting a response action, merely because responsible parties have indicated some willingness to take some form of response action. This amendment would confirm that if the Federal government determines that Federal response is needed, the President would have the discretion to determine the appropriate response and to take action; responsible parties would not be authorized to forestall Federal response.

Scope of Program

The language in the statute authorizes response to the release into the environment of any designated hazardous substance, or pollutant or contaminant which may present a threat to public health, welfare, or the environment.

The amendment would focus Superfund response authority on the problems associated with releases of hazardous substances from uncontrolled hazardous waste sites. Specifically, the amendment would --

- delete "pollutant or contaminant" from the Act;
- delete "welfare" from the phrase "public health, welfare, and the environment" in the Act;
- authorize response whenever there is a release or substantial threat of a release into the environment which may present a "risk" to public health or the environment; and
- prohibit Superfund response from certain categories of releases, unless the President determines that a major public health or environmental emergency exists and that no other person has the authority or capability to respond in a timely manner --
    - from mining activities covered by SMCRA;
    - from the lawful application of pesticides registered under FIFRA;
    - affecting residential, business, or community structures when contamination is not caused by a release from a hazardous substance treatment, storage, or disposal facility;
    - affecting public or private domestic water supply wells when contamination is not caused by a release from a hazardous substance treatment, storage, or disposal facility;
    - from naturally occurring substances in their unaltered form; and
    - covered by and in compliance with a permit, issued under other federal environmental laws.

The effect of the amendment would be to ensure that Superfund responses are focused on those releases of hazardous substances which present the greatest threat to public health and the environment, and to enhance EPA's ability to effectively manage the program.

SECTION 102

Statutory Limits on Removals

Section 104(c)(1) of CERCLA limits removal actions to six months in duration and $1 million in cost unless certain waiver criteria are met. These criteria incude: a finding that continued action is necessary to prevent or mitigate the emergency and to protect public health and the environment, and that assistance would not otherwise be provided on a timely basis. Because of the limits established in this provision, some removals have been scaled-down below the level needed to achieve a cost-effective response.

This amendment would provide an additional and independent criterion for waiving the statutory limits on removal actions and increase the six month duration limitation to one year. The new criterion would permit removals to exceed the $1 million cost and one year duration limitations if the response action is "appropriate and consistent with a permanent remedy." The amendment would ensure that removals accomplish a more complete response, if such response is appropriate in that situation.

The primary effect of the amendment would be to enhance the President's ability to choose the most effective response in removal situations. Generally, the amendment would allow, where appropriate, the first operable units of remedial actions to be considered removals. This would provide the Agency with increased flexibility to quickly initiate the appropriate removal. This ability to implement a response quickly would enhance efforts to contain the migration of hazardous substances. In turn, this would result in increased public health and environmental protection and may be less costly since hazardous substances could be contained before they migrate to a much larger area requiring greater response.

SECTION 103

Permanent Remedies

Section 104(c)(4) of CERCLA requires the selection of an appropriate remedial action that is consistent with the National Contingency Plan (NCP) and is cost-effective in light of concerns about protecting public health and the environment, considerations of Fund-balancing, and the need for immediate action. There is no explicit requirement that the selection of a remedial action take into consideration permanent solutions or alternative treatment technologies.

EPA currently considers the long-term effectiveness and the permanence of alternatives in its selection of the appropriate remedial action. This amendment would provide explicit Congressional approval of EPA's position and would allow revision of the NCP to implement this approach to permanent remedies.

SECTION 104

Offsite Remedial Action

Section 101(24) of CERCLA, which defines "remedy or remedial action", provides that additional threshold criteria must be met before the President may undertake off-site disposal of hazardous substances. This creates a bias against off-site disposal and reflects past Congressional and EPA emphasis on on-site land disposal as the preferred remedial action.

The objective of the amendment is to eliminate the statutory bias for on-site remedies by making the statute neutral with regard to on-site or off-site remedies.

Congress, as reflected in the 1984 amendments to the Resource Conservation and Recovery Act, and EPA have come to recognize the value of treatment and other alternative technologies.

The primary effect of this amendment would be to reduce the proliferation of sites requiring monitoring in perpetuity (by consolidating wastes from many sites into one larger and closely monitored facility), by recognizing the value of permanent off-site remedies, such as treatment.

SECTION 105

National Contingency Plan (NCP)

This amendment would (1) eliminate the requirement that the NCP include at least 400 facilities, and (2) clarify that States are allowed only one highest priority designation for the life of the list.

The deletion of the phrase "at least 400 facilities" would allow the Agency to select and place on the National Priorities List, only those facilities which present "the greatest danger to public health or welfare or the environment."

The second part of the amendment would be a Congressional ratification of EPA's present policy which is to permit the States to make only one highest priority designation. This policy is reflected in the most recent proposed revisions to the NCP.

These amendments allow the President to effectively limit the NPL to only those facilities which pose significant problems to public health or the environment as determined through Agency regulation.

SECTION 106

Cooperative Agreements

The amendment would explicitly permit contracts and cooperative agreements to cover more than one facility, as is current EPA policy, and clarifies and confirms that response includes enforcement activities associated with a remedial or removal action. The objective of the amendment is to facilitate State response activities by permitting States to enter into agreements covering more than one site, and by providing Fund money for response actions, including enforcement activities.

The primary effect of the amendment would be to increase State participation in response and enforcement activities. This would increase the overall pace and effectiveness of the Superfund program.

SECTION 107

Publicly Operated Facilities

Section 104(c)(3) of CERCLA requires States to pay at least 50 percent of response costs for hazardous substance releases from facilities owned by the State or political subdivision thereof at the time the release occurred.

The amendment would change the 50 percent State cost share to 75 percent and impose the 75 percent or greater cost-share only at those facilities operated directly or indirectly by the State or political subdivision. The test for imposing the 75 percent or greater cost-share would be related to operation rather than ownership of the facility at the time of disposal of hazardous substances. The cost-share under this amendment would apply to sites owned and operated by the State; sites owned by the State and operated by a private party under a contract or lease with the State; and sites owned by a private party but operated by the State. The objective of the amendment is to impose the cost-share on States only in those cases where the State is involved in the operation of the facility, either directly or indirectly.

This amendment would also clarify that for purposes of this amendment only that the term facility will not include navigable waters or the beds underlying those waters, and thus a 75 percent cost share would not be imposed on States for response actions at such facilities.

SECTION 108

Siting of Hazardous Waste Facilities

Section 104(c)(3) of CERCLA requires that States assure the availability of hazardous waste disposal facilities for off-site remedial actions that are in compliance with subtitle C of RCRA. States are not, however, required to nor provided incentives for creating or expanding existing capacity for managing wastes, or otherwise provide for future treatment and disposal of hazardous wastes. In order to maintain an aggressive Superfund program, it is essential to ensure that States have adequate waste disposal capabilities.

This amendment would provide initiatives to States to create and expand capacity for managing wastes within the State by prohibiting the use of Fund money for response actions in those States that do not assure the availability of hazardous waste disposal capacity sufficient to handle that State's needs during a period of time to be specified by regulation. The amendment would be effective two years after enactment.

There would be limited exceptions to this prohibition. First, the amendment would permit Fund expenditures for alternative drinking water or for temporary relocation of affected individuals from their homes for up to one year. Second, Fund money could be used to finance a response action in a State that does not provide the above assurance if the President determines that a major public health or environmental emergency exists.

Any response action taken where the State fails to assure the availability of sufficient offsite capacity would be subject to a higher cost share.

The amendment would also require States to pay any additional costs associated with transporting wastes outside the State's boundaries (or outside the region, if the State has entered into a regional agreement for hazardous waste treatment and disposal) in addition to the cost of the remedy. This clause would be effective upon enactment.

The objective of the amendment is to create an economic incentive for States to expand existing or create new long-term in-state capacity to manage hazardous wastes.

SECTION 109

Community Involvement

CERCLA does not presently address the role of community involvement in response actions. Existing federal policy does, however, provide for an active community role as expressed in existing program guidance and the proposed revisions to the National Contingency Plan.

This amendment would require public notification and an opportunity for public comment on the proposed action. The primary objective of the amendment is to ensure community involvement in remedial actions taken pursuant to this Act, including Fund-financed and enforcement actions.

Because the President has already incorporated the requirements set forth in this amendment in operating guidance, the amendment itself would not impose new responsibilities on the federal government.

The amendment confirms the President's commitment to community involvement in the Superfund program.

SECTION 110

Health Related Authorities

Section 104(i) of CERCLA establishes the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR, in cooperation with EPA and other Federal agencies, is authorized to implement the health related authorities of the Act. These authorities include the establishment and maintenance of: a national registry of diseases and illnesses associated with and persons exposed to hazardous substances, and a data base on the health effects of hazardous substances. CERCLA does not clearly define specific roles and responsibilities of ATSDR and EPA in implementing these and other health related authorities.

The amendment would clarify that the primary purpose of health related activities is to support response actions through health assessments, consultations, and other technical assistance relating to the health effects of exposure to hazardous substances, and to improve the ability to render future public health recommendations through expanding the existing body of scientific knowledge.

In addition, the amendment would clarify existing roles and responsibilities of ATSDR and EPA in conducting various health related activities. Specifically, the amendment would authorize EPA as well as State and local officials to request that ATSDR provide health consultations, assessments, and other assistance to determine the health effects of exposure to hazardous substances. ATSDR may provide such assistance. The President would also be authorized to conduct exposure and risk assessments at sites where a release has occurred.

The amendment would not significantly affect current health related activities but it merely provides a statutory basis for current roles and responsibilities undertaken by ATSDR and EPA.

SECTION 111

Compliance with Other Environmental Laws

This amendment would authorize the President to specify in the National Contingency Plan (NCP) the extent to which remedial and removal actions selected under section 104 or selected under section 106 should comply with applicable or relevant standards and criteria established under other Federal, State or local environmental and public health laws. The amendment would specify the factors the President must consider in making this determination; these include: the level of health or environmental protection provided by the standard; the technical feasibility of achieving the standard; the interim or permanent nature of the response; the need for expedient action; and the need to preserve funds to respond to other respond to other releases.

The objective of the amendment is to clarify and confirm the President's authority to determine when response actions should comply with other Federal, State, or local laws, which is set forth in existing EPA policy. This amendment confirms that because of the unique statutory provisions of CERCLA, and requirements for response action that strict compliance with other statutory provisions is often not appropriate or necessary.

SECTION 112

Actions Under the National Contingency Plan

Section 107(d) of CERCLA exempts persons from liability for damages resulting from actions taken or omitted in responding to hazardous substance releases.

This amendment would add that persons (e.g., EPA contractors and others) conducting response actions in accordance with the NCP or at the direction of an on-scene coordinator are also exempt from liability for future response costs. This means that, for example, contractors would not be held liable for additional response costs at a site if another response action is taken at a site where the contractor already conducted a previous action (if a second response action was taken because the first response was not sufficient to address the problem), unless the original action was negligent or intentionally misconducted.

The primary effect of the amendment would be to limit contractor liability for future response costs. The amendment would not affect third party liability claims. Nor would the amendment affect the liability of persons liable or potentially liable under section 107(a) who undertake a response action under this act.

Section 113

Natural Resource Damage Claims

The amendment would clarify existing language about the responsibilities of Federal and State natural resources trustees. In general, the Federal or State trustee would perform assessments of damage to resources under its jurisdiction, except that Federal trustees may perform assessments on behalf of States and may be reimbursed by States for performing the assessments. Neither Federal nor State trustees would be required to use the damage assessment regulations being prepared by the Department of the Interior, but if they used the Department of the Interior regulation the assessment would be entitled to a presumption of validity.

The amendment would also eliminate use of the Fund to pay trustees for damage to natural resources. Accordingly, all references to natural resource damage claims against the Fund would be deleted from the Act. The ability of Federal and State trustees to recover damages from responsible parties under section 107 would not diminished.

Finally, Federal agencies with custody and accountability for specific Federal facilities would be the sole trustee of natural resources on, under, or above such facilities for purposes of CERCLA.

SECTION 114

Response Claims

Section 111 of CERCLA authorizes parties who conduct response actions to assert claims against the Fund to recover necessary response costs incurred in carrying out the National Contingency Plan. The procedures to be followed in presenting and processing these claims against the Fund are set forth in section 112. This amendment would clarify and streamline the process for response claims.

The amendment would make the following changes:

- Clarify authority to preauthorize response claims;
- Eliminate provisions for negotiations with responsible parties;
- Substitute an administrative hearing process for claims adjustments and arbitration; and
- Clarify time frames for review of claims.

The availability of response claims can expedite private party cleanup. Following preauthorization for all or portions of the cleanup, private parties can promptly conduct cleanup action, and bring claims to the Fund when the response action is completed.

CERCLA currently prescribes five steps at a minimum in the process from initial presentation of the claim to the responsible party to final payment of an award. Where administrative review and judicial appeal are involved the process may take as many as eight steps before the claimant receives final payment of an award.

The amendments to this section would streamline the claims procedure. First, section 111 would be amended to clarify the authority of the Agency to preauthorize response claims. Preauthorization can be used to assure that response actions are conducted properly, and that they are limited to available funds.

Second, the provisions for negotiations with responsible parties prior to payment of claims would be eliminated. Such negotiations as are needed would be conducted prior to preauthorization.

Third, an administrative hearing process would be substituted for the arbitration procedure presently provided for in the statute. The arbitration procedure is a vestige of certain economic damage claims which were not enacted in 1980. In that the claims procedures will involve only reimbursement of costs, there is no reason for claims to be arbitrated.

Response costs, are not particularly appropriate for consideration by a panel of arbitrators.

Fourth, certain ambiguities in the timeframes for Presidential action would be clarified.

SECTION 115

Indian Tribes

CERCLA is presently silent regarding the status of tribal governments and Indian lands. Current CERCLA policy, however, recognizes tribal governments as independent sovereigns with authority and responsibility over reservations roughly analogous to that of State governments. This means that tribal governments are subject to various notification, consultation, health related activity, and financial and disposal capacity assurance requirements.

The proposed amendment would clarify the role of States, Indian tribes, and the Federal government for facilities on Indian lands. It defines Indian lands to include only those where there is some type of trust responsibility or restriction against alienation.

Subsection (a) would add two new definitions, "Indian tribe" and "Indian lands." Both definitions are tied to the United States trust responsibility. Not all Federally recognized Indian tribes would be included in the CERCLA definition; only those tribes for which land is held in trust.

Section (b) would set forth the procedure for remedial actions on Indian lands. Indian tribes would be required to provide the assurances specified in section 104(c)(3) for sites on Indian lands. If the Secretary of the Interior finds that a tribe cannot provide these assurances, the Department of the Interior may provide them on behalf of the tribe. States would not be required to provide assurance for sites wholly on Indian lands.

The amendment authorizes the President to enter into agreements with Indian tribes to carry out response actions under section 104 and the National Contingency Plan and to enforce these agreements. Indian tribes would be reimbursed from the Fund for reasonable response costs.

Also, Indian tribes would be notified by the National Response Center of releases that affect Indian lands.

SECTION 116

Preemption

Section 114(c) of CERCLA preempts States from requiring persons to contribute to any fund designed to provide compensation for claims for response costs or damages which may be compensated under CERCLA. The provision is not clear and it has been argued that the intent of this provision is to preempt States from imposing State taxes to finance certain CERCLA and non-CERCLA action.

The amendment would delete the section which preempts States from imposing taxes for purposes already covered by CERCLA. The objective of the amendment is to ensure that States may impose taxes to meet Superfund cost-share requirements, and to foster State cleanup at sites not covered by CERCLA.

The primary effect of the amendment would be to remove a potential barrier to the creation of State superfund programs. The amendment may result in an increase in the number and pace of hazardous substance response actions undertaken or partially funded by States since States would be able to raise funds to assist such hazardous substance response.

SECTION 117

State Cost-Share

Section 104(c)(3)(C)(i) of CERCLA requires States to pay ten percent of costs for remedial actions at privately owned facilities.

This amendment would alter the existing Federal-State cost-share to require States to pay 20 percent of the remedial action costs at privately owned sites. The cost-share for State or political subdivision sites would be 75 percent (see section 106 of this Act).

The objective of this amendment is to reduce the existing burden on the Federal government for financing remedial response actions by requiring the States to pay a larger share of costs at privately owned sites. The amendment is consistent with an overall goal of these amendments in increasing the role of the States in conducting response actions.

TITLE II -- PROVISIONS RELATING PRIMARILY TO ENFORCEMENT

SECTION 201

Civil Penalties for Non-Reporting

Section 103(a) of CERCLA requires any person in charge of a vessel or facility to notify the National Response Center as soon as the person in charge has knowledge of any release of a hazardous substance in an amount that equals or exceeds the reportable quantity established under section 102. These notifications serve as one basis for the Federal government to determine whether response action is appropriate for the release.

The existing statute provides only criminal penalties for failure to report. This amendment would increase the criminal penalty to $25,000 and provide additional enforcement flexibility by allowing the imposition of a civil penalty of up to $10,000 per violation.

The amendment would enable the Administrator to assess civil penalties aggregating less than $25,000 for such violations; penalties aggregating more than $25,000 may be recovered by the Attorney General through a civil action.

Civil penalties for violations of notification requirements have several advantages:

First, civil penalties may be imposed in situations where the violations do not merit the sanctions associated with criminal violations.

Second, when the Federal government takes an enforcement action to compel private party cleanup action for such a release, the Federal government may now also seek penalties for violations of the notification provision in the cleanup enforcement action.

SECTION 202

Contribution and Parties to Litigation

This amendment would change section 107 of CERCLA to provide a greater degree of finality to settlements reached with responsible parties, and to expedite private party cleanup by simplifying the litigation process in imminent hazard and cost recovery actions.

This amendment would clarify and confirm existing law governing liability of potentially responsible parties in three respects:

- parties found liable under section 106 or 107 would have a right of contribution, allowing them to sue other liable or potentially liable parties to recover a portion of the costs paid;

- parties who reach a judicially approved good faith settlement with the government would not liable for the contribution claims of other liable parties; and

- where a civil or administrative action is underway, contribution actions could be brought only after a judgment is entered or a settlement in good faith is reached.

The first provision should help to encourage private party settlements and cleanups. Parties who settle or who pay judgments as a result of litigation, could attempt to recover some portion of their loss in subsequent contribution litigation from parties who were not sued in the enforcement action. Private parties may be more willing to assume the financial responsibility for cleanup if they are assured that they can seek contribution from others.

The second provision would help bring an increased measure of finality to settlements. Responsible parties who have entered into a judicially approved good faith settlement under the Act would be protected from paying any additional portion of costs to other responsible parties in a contribution action.

The third provision would allow more expeditious management of litigation. Hazardous waste sites often involve dozens or even hundreds of potentially responsible parties with differing types and degrees of involvement in the facility. While the government may sue all potentially responsible parties, it need not sue all these parties. It may instead sue a limited number of parties to secure complete cleanup or all costs of cleanup under the theory of joint and several liability. In some instances these parties have in turn sued other potentially responsible parties in the same judicial action. In several cases this has resulted in massive and potentially unmanageable litigation.

The amendment would clarify that if an enforcement action is underway, claims for contribution or indemnification could not be brought until a judgment or settlement is reached. This change would allow the government to limit the number of parties in its actions, so that litigation could be conducted in a more efficient and expeditious fashion.

SECTION 203

Access and Information Gathering

Section 104(e) of CERCLA clearly authorizes the Agency to request information concerning the treatment, storage, disposal or handling of hazardous substances, and to enter premises where hazardous substances were generated, stored, treated, disposed, or transported. This amendment would clarify and confirm the President's right to access and information concerning the release or threatened release of hazardous substances by making explicit the original intent of Congress when CERCLA was enacted in 1980.

Currently, there is no explicit authority to enforce information requests under CERCLA. In addition, there is no explicit language to compel parties to provide access to the site or adjacent areas. Access to the site is obviously needed to conduct a response action. The President may also need access to adjacent areas to conduct sampling or move equipment.

While landowners generally will provide access voluntarily, explicit statutory authority would encourage private parties to consent to access and information requests, and would provide explicit mechanisms for the President to obtain access and information when such requests are reasonable but refused.

This amendment would also establish procedures for the President to issue orders for access and information. The President would notify potential recipients of orders and provide an opportunity for consultation. The President could also seek to have the Federal courts enjoin interference with access and direct private parties to comply with orders. This provision would enable the government to seek judicial relief so that necessary response actions would not be unduly delayed.

SECTION 204

Administrative Orders for Section 104(b) Actions

CERCLA section 104(b) currently authorizes the President to conduct a variety of investigations, studies, and information gathering activities. Under this section, remedial investigations and feasibility studies (RI/FSs) are performed to serve as the basis for choosing the appropriate extent of remedy.

In some circumstances, it may be appropriate to allow potentially responsible parties to conduct RI/FSs or other investigations or studies. This approach would free up government resources to address other sites, and would increase the likelihood that private parties would assume responsibilities for cleanup of the site. Such private-party RI/FSs are most effective when they are performed pursuant to an administrative order that clearly sets out the responsibilities of the private parties.

This amendment to CERCLA would provide for administrative orders on consent without the need for any findings by the President with regard to potential hazard at the facility, to allow the planning and investigative stages of response actions to proceed more expeditiously. The order would be enforceable in district court, and the court could issue a civil penalty for noncompliance.

It should be noted that EPA retains the authority to choose the appropriate remedy, based on a Record of Decision developed by EPA. This amendment would not authorize orders on consent for actual cleanup activities under section 104.

This section would also include a technical amendment to section 107 of CERCLA. Section 107 currently provides for treble damages from any person who is liable for a release or threat of release and who fails without sufficient cause to comply with an order under section 104. The penalties established for violations of administrative orders for access under section 203 of this Act, and orders on consent for private party studies and investigations, are sufficient incentives to assure compliance. Accordingly, the reference to treble damages for violations of section 104 orders would be removed. This would not change the President's authority to seek treble damages for violations of orders under section 106.

SECTION 205

Non-Trust Fund and Pre-Trust Fund Expenditures

This amendment would clarify and confirm that CERCLA establishes liability for costs incurred by the United States in response to a release or threatened release of a hazardous substance from a treatment, storage or disposal facility where the response was after passage of the Resource Conservation and Recovery Act of 1976 and the party knew or should have known of the response action. Such costs must not have been inconsistent with remedial or removal actions under CERCLA.

The United States has incurred substantial response costs in connection with responses at hazardous waste facilities occurring after enactment of RCRA that are wholly consistent with CERCLA's goals and authorities. Where the person knew or should have known of the Federal response action, but did not act to clean up the release, it is entirely appropriate and consistent with CERCLA to clarify and confirm that responsible parties are liable for such response costs.

SECTION 206

Statute of Limitations

CERCLA currently includes no explicit statute of limitations for the filing of cost recovery actions under section 107. Nevertheless, the Federal government recognizes the need for filing of cost recovery actions in a timely fashion, to assure that evidence concerning liability and response costs is fresh, to help replenish the Fund, and to provide some measure of finality to affected responsible parties. The absence of an explicit statute of limitations has also led to some uncertainty concerning whether the existence of such a statute of limitations should be assumed under Federal law.

This amendment would eliminate this uncertainty by establishing a six-year statute of limitations for the filing of cost recovery actions. The six-year statute of limitations is the same as the period established by a clear line of cases involving the parallel provisions in section 311 of the Clean Water Act. Because response actions may extend for a number of years, the government is not precluded from commencing an action for recovery of costs at any time after such costs have been incurred.

For purposes of this section, the response action is regarded as completed upon completion of any operation and maintenance activities funded by the Federal government.

In addition, this amendment would provide a three-year statute of limitations: for damage actions, running from the date of discovery of the loss; for contribution actions, running from entry of judgment or the date of settlement; and for rights subrogated pursuant to a claim paid from the Fund, from the date of payment of such claim.

SECTION 207

Pre-Enforcement Review

The purpose of this amendment is to clarify the process for judicial review of government decisions on the appropriate extent of remedy and liability of responsible parties. This section establishes that:

- review of all Presidential decisions concerning remedy is on the administrative record;
- there is no pre-enforcement review of section 106 administrative orders; and
- administrative orders are subject to judicial review once response action is completed.

(a) Record Review:

While CERCLA does not explicitly state how decisions on remedies will be judicially reviewed, the Federal government has taken the position and certain courts have suggested that review of decisions concerning remedy, like most administrative decisions, are on the basis of the administrative record. This amendment would clarify and confirm that judicial review of the response action is limited to the administrative record and that the action shall be upheld unless it is arbitrary, capricious, or otherwise not in accordance with law. Reliance on an administrative record helps assure that the basis for the response decision is clearly articulated and open to the scrutiny by the public and responsible parties.

Limiting judicial review of response actions to the administrative record also expedites the process of review and ensures that the reviewing court's attention is focused on the information and criteria used in selecting the remedy.

(b) Pre-Enforcement Review:

Section 106 orders may be subject to judicial review at the time the government acts to enforce the order and collect penalties for non-compliance. This amendment would clarify and confirm that orders are not subject to judicial review prior to that time.

The clarification reflects the fact that pre-enforcement review would be a significant obstacle to the use of administrative orders. It is likely that pre-enforcement review would lead to considerable delay in providing cleanups, increase response costs and discourage settlements and voluntary cleanups.

(c) Review of Orders:

The changes discussed above clarify and confirm the existing process. Section 208(c) would amend section 106 to establish new procedures for reimbursement of certain response costs and to provide for judicial review of administrative orders once the response action required by the order is completed.

Under the amendment, responsible parties can request reimbursement from the Fund for costs incurred in responding to an order. If the President refuses to grant all or part of a petition for reimbursement, responsible parties may file an action in district court seeking reimbursement. Responsible parties can obtain reimbursement if they can show that:

- o they are not liable, and that the costs which they incurred in responding to the order were reasonable; or
- o the response action ordered by the President was arbirtrary and capricious or otherwise not in accordance with law.

This provision is intended to foster compliance with orders and expeditious cleanup, allowing potentially responsible parties to preserve their positions concerning liability and the appropriateness of the response action, in circumstances where they agree to undertake the cleanup. Under the record review provisions discussed above, responsible parties would also have opportunities for input into the decision making process for choosing the appropriate response action.

SECTION 208

Nationwide Service of Process

Rule 4(f) of the Federal Rules of Civil Procedure limits effective service of process to the territorial limits of the State in which the district court is held, unless a Federal statute provides otherwise. Difficulties have arisen in obtaining personal jurisdiction over certain defendants in actions by the United States under CERCLA. This amendment would remove these difficulties by providing that the United States may serve a defendant in any district where he resides, transacts business, or may otherwise be found.

SECTION 209

Abatement Action

This amendment would delete the references to "welfare" in section 106 of CERCLA. Consequently, enforcement or abatement action could only be taken when the President determines that there may be an imminent and substantial endangerment to the public health or the environment because of an actual or threatened release of a hazardous substance from a facility. This amendment focuses CERCLA enforcement efforts on public health and the environment.

SECTION 210

Federal Lien

This amendment would enable the United States to recover at least some of its response costs through an *in rem* action against the real property that is the subject of the response action. Such protection for the United States would also enable it to recover the increase in land value resulting from the response action, thus preventing unjust enrichment of the property owner.

The amendment would provide that all costs and damages for which a person is liable to the United States under section 107(a) shall be a lien on all real property affected by the response action. The lien would arise at the time the United States first incurs response costs, but would not be perfected as against purchasers, security interest holders, and judgment lien creditors (all as defined in the tax lien statute, 26 U.S.C. §6321 *et seq.*) until notice of the lien has been recorded or filed. The notice provision would not apply with respect to any person who knew or should have known that the United States had incurred response costs.

SECTION 211

Penalties

This amendment would increase criminal penalties in section 103(d)(2) of CERCLA for destruction of records from $20,000 to $25,000. Civil penalties under section 106(b) of CERCLA for violation of a 106 order would be increased from $5,000 to $10,000 per day. These increases in penalties are intended to significantly strengthen existing incentives for compliance with CERCLA provisions.

SECTION 212

Federal Agency Settlement

The existing section 107(g) of CERCLA makes Federal agencies liable for response costs and natural resource damages from releases of hazardous substances in the same manner as a private entity. This may be the basis for legitimate claims which should be paid by the United States without resort to litigation. However, CERCLA currently neither confers authority nor specifies procedures for administrative payment of such claims.

This amendment provides procedures for administrative settlement of CERCLA claims. The language is modeled closely after a similar provision in the Federal Tort Claims Act, 10 U.S.C. § 2672. Under the amendment, Federal agencies are authorized to settle claims for $25,000 or less in accordance with Justice Department procedures, and to arrive at tentative settlements for Justice Department approval for amounts over $25,000.

SECTION 213

Foreign Vessel Liability

This amendment would delete from CERCLA a clause that had the unintended effect of excluding from liability under section 107 all foreign vessels not under United States jurisdiction, even when such vessels release hazardous substances in areas otherwise subject to United States jurisdiction.

TITLE III -- AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954

Title II of CERCLA amended the Internal Revenue Code of 1954, establishing the Hazardous Substance Response Trust Fund (Fund). The Fund is comprised primarily of revenue derived from excise taxes on certain petrochemicals and inorganic raw materials, as well as on domestic crude oil and imported petroleum products (87%) and appropriations from the General Fund (12%). Revenues in the Fund are used to finance Superfund response and support activities.

The present CERCLA tax scheme is referred to as a "feedstock tax" because it imposes a tax on the basic chemical building blocks of chemical products. The hazardous substances and wastes associated with the problems addressed by CERCLA are byproducts of production processes that use these raw materials.

The Fund was designed to contain approximately $1.6 billion from FY 1981 through FY 1985. Current authorization to impose taxes to finance the program expires September 30, 1985. This amendment is needed to authorize the imposition of taxes to finance Superfund response actions over the next five years.

The tax structure set forth in these amendments has been designed to meet the following objectives:

- to provide a stable and predictable source of revenue;
- to broaden the tax base from which contributions are received;
- to minimize adverse economic impacts on taxed industries; and
- to focus the tax on the type of industries and practices that have caused the problems that are addressed by Superfund.

The amendment would authorize a Fund of approximately $1 billion per year, or roughly $5.3 billion from FY 1986 through FY 1990. This represents the level of funding that can be effectively managed over the next five years and raised without significant adverse affects on tax paying firms.

The amendment would establish a Fund with revenue derived primarily from three sources.

The first source of revenue would be derived from a feedstock tax. This tax would be imposed on crude oil and petroleum products as well as the 42 chemical feedstocks taxed under the present statute. The tax rates imposed on these feedstocks would remain the same as the rates established in 1980: approximately $4.87 per ton for petrochemical feedstocks, approximately $4.45 per ton for inorganic raw materials (with adjustments for elemental equivalency), and 0.79 cents per barrel for crude oil and petroleum products. This feedstock tax would maintain the current CERCLA exemptions on methane or butane used as fuel, substances used in the production of fertilizers, sulfuric acid produced as a by-product of air pollution control, substances derived from coal, and taxable chemicals made from previously taxed taxable chemicals. The feedstock tax has been designed to raise approximately $300 million per year.

The second source of revenue would be derived from a waste-management tax. This tax would be imposed on the receipt of hazardous wastes at a qualified treatment, storage, or disposal unit (i.e. a unit permitted under the Resource Conservation and Recovery Act (RCRA)), as well as on hazardous wastes disposed of in the ocean or exported from the United States. The tax liability would be imposed on the owner or operator of a qualified hazardous waste management facility, the owner or operator of a vessel that disposes of wastes into or over the ocean, and the exporter of hazardous wastes.

The tax rates imposed under the waste-management tax would increase each year of the tax, and would be higher for landfills, surface impoundments, waste piles, and land treatment units. The following amount per wet-weight ton would be imposed:

Year	Rate *
FY 86	$ 9.80 per ton
FY 87	$10.09
FY 88	$11.13
FY 89	$13.48
FY 90	$16.32

For waste exported from the U.S., disposed into or over the ocean, or received at a qualified hazardous waste management unit other than specified above, the following amount per wet-weight ton would be imposed:

Year	Rate *
FY 86	$ 2.61 per ton
FY 87	$ 2.68
FY 88	$ 2.96
FY 89	$ 3.59
FY 90	$ 4.37

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* Beginning in 1987, the tax rates would be adjusted annually to compensate for any shortfalls in projected revenues. If necessary to meet revenue targets, the tax may be extended from October 1, 1990, through March 31, 1991. at the same rates applicable in Fiscal Year 1990.

Wastes managed in units not subject to permits under subtitle C of RCRA (e.g. wastes stored in tanks and containers for less than 90 days), wastes from CERCLA response actions, and wastes generated by Federal facilities would not be subject to the waste-management tax. Additionally, a credit would be given for taxes already paid on wastes that are transferred from one taxable unit to another. If the units involved in the transfer have different applicable tax rates, the credit would be based on the lower rate.

The waste-management tax has been designed to raise approximately $600 million per year.

The third source of revenue would be derived from interest on Superfund investments, fines, costs recovered from parties responsible for response actions financed from the Fund, and intra-fund transfers. This portion of the Fund would raise approximately $100 million per year.

TITLE IV -- MISCELLANEOUS PROVISIONS

SECTION 401

Applicability of Amendments

This amendment would add a new section to CERCLA providing that the amendments relating to section 104(a) and (b), which limit response authority under CERCLA, would not affect sites listed on the NPL prior to January 1, 1985.

The effect of the amendment would be that sites listed as final on the NPL prior to January 1, 1985 would not be affected by the amendments to sections 104(a) and (b). Sites which remain proposed for inclusion on the NPL may be affected by the amendments. In other words, sites which remain proposed that do not pertain to releases from uncontrolled hazardous waste sites or are specifically excluded from Superfund response (e.g., mining wastes covered by SMCRA or sites contaminated solely as a result of the lawful application of pesticides) would not be eligible for Superfund response, because they did not become final NPL sites by January 1, 1985.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 26 1985

OFFICE OF
GENERAL COUNSEL

Honorable George J. Mitchell
United States Senate
Washington, D.C. 20510

Dear Senator Mitchell:

This is in response to your question concerning the legal authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) for the "umbrella" agreement (Enclosure I) recently entered into between the Environmental Protection Agency (EPA) and Clean Sites, Inc. (CSI). Under this agreement, EPA will consider indemnifying CSI from Superfund for liability arising from CSI's efforts to promote cleanup at individual hazardous waste sites.

In November 1984, this office set out the legal basis for CSI undertaking response actions under CERCLA in a document entitled "Justification for CSI Preauthorization" (Enclosure II). As stated in the Justification, Section 105(9) of CERCLA provides that the National Contingency Plan (NCP) (the regulation under which the CERCLA program is implemented) is to specify roles for private organizations and entities in responding to releases of hazardous substances. Under section 300.25(d) of the NCP, private parties may undertake response actions and be reimbursed for their costs if the actions are approved in advance by EPA and carried out in conformity with the NCP. Section 111(a)(2) of CERCLA authorizes payment from Superfund of claims for necessary response costs incurred by private parties.

CSI is a non-profit corporation with the exclusive objective of facilitating voluntary cleanup of hazardous waste sites and is therefore a private party within the meaning of the statute and the regulations. The types of activities in which CSI will be engaged are response actions under CERCLA.

As we said, Section 111(a)(2) authorizes the reimbursement of "necessary" response costs. A necessary cost is one that is essential to or directly contributes to the accomplishing of the purposes for which funds were appropriated. We believe that the cost of indemnifying CSI for liability to third parties under the umbrella agreement is a necessary response cost. No other costs incurred by CSI are payable under the terms of the umbrella agreement.

CSI's Board of Directors, officers and employees may be subject to personal liabilities from third party claims arising from their advisory activities at Superfund sites. EPA has determined that CSI's activities will substantially contribute to the accomplishment of the purposes of CERCLA and that EPA's indemnification is necessary for CSI's participation. (See Enclosure II).

The agreement with CSI is not our first use of Superfund for indemnification. EPA decided in 1981 to indemnify EPA contractors engaged in remedial investigations and feasibility studies at Superfund sites for third party liabilities arising from their actions because such payments can reasonably be considered a necessary expense of such contracts. The basis for that decision was that in many instances adequate competition for such contracts could not be obtained absent such indemnification and since EPA pays the insurance costs of these contractors, the actual costs of insurance would likely be greater than the potential cost of indemnification.

We have not yet agreed, however, to indemnify CSI with respect to any particular site. That decision will be made only after a full consideration of the need for indemnification at each site. In addition, the indemnification would be limited to $5 million per site, and $10 million per year. CSI would be required to obtain any available insurance or other indemnification; EPA's indemnification would be of last resort. Finally, the indemnification to be provided CSI would be limited in accordance with the requirements of the Anti-Deficiency Act, 31 U.S.C. §1341, which prohibits contingent liabilities that could exceed an agency's appropriations.

If I may be of further assistance in this matter, please contact me.

Sincerely yours,

Gerald H. Yamada
Acting General Counsel

Enclosures

Enclosure I

"Umbrella Agreement"--Clean Sites Inc.

WHEREAS, the United States Environmental Protection Agency ("EPA"), under the Comprehensive Environmental Response, Compensation, and Liability Act (the "Act"), 42 U.S.C. §§9601 et seq., and Executive Order 12316, is charged with the responsibility of ensuring the cleanup of sites at which there has been a release or threatened release of a hazardous substance into the environment (hereinafter, "sites"), as these terms are defined under the Act;

WHEREAS, EPA desires to expedite the cleanup of sites listed on the National Priorities List ("NPL");

WHEREAS, the Act contemplates a role for private organizations in the cleanup of sites;

WHEREAS, Clean Sites, Inc. ("CSI") was organized and chartered for the sole purpose of facilitating and expediting the cleanup of sites;

WHEREAS, CSI's principal objective is to encourage, arrange or facilitate the cleanup of sites that EPA might not be able to address in the near term;

WHEREAS, CSI will select only officers and employees who possess the scientific, technical, business, and other skills necessary to facilitate the cleanup of sites by potentially responsible parties;

WHEREAS, CSI is a non-partisan organization, whose structure and leadership have been selected with a view to ensure that CSI's activities will be performed evenhandedly, assuring that the full range of public and private interests will be taken into account;

WHEREAS, CSI is a not-for-profit charitable organization registered with the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the funding for CSI's advisory activities at particular sites for which CSI may seek preauthorization to submit a claim for indemnification from the Hazardous Substance Response Trust Fund (the "Fund") will be independent of any potentially responsible parties associated with such sites (although CSI does engage in general fund raising from industrial firms and may (without remuneration) transmit funds from potentially responsible parties to third parties who furnish management services with respect to the cleanup of particular sites);

WHEREAS, CSI's by-laws provide assurance that CSI's decisionmaking process will be free from conflicts of interest;

WHEREAS, EPA will make available to the public all factual documents considered by EPA in its decisionmaking process to select a remedy for the site cleanup;

WHEREAS, CSI will make available to the public the factual information reasonably necessary for an informed and independent evaluation of cleanup plans and implementation;

WHEREAS, CSI and its directors, officers, and employees may be subject to third party liability claims arising from its activity, which claims are not fully covered by insurance or other indemnification;

WHEREAS, the protection of CSI and its directors, officers, and employees from such third party claims is necessary to ensure the performance of CSI's services, and indemnification from the Hazardous Substance Response Trust Fund (the "Fund") is a necessary source of such protection;

WHEREAS, any site-specific agreement to preauthorize CSI or covered individuals to submit to the Fund a claim for indemnification shall contain, at a minimum, the conditions set forth in the model site-specific agreement contained in Appendix A hereto;

NOW THEREFORE IT IS AGREED:

1. CSI will use its best efforts to facilitate cleanups of sites by potentially responsible parties;

2. Except as provided in paragraph 4, EPA will consider, with respect to individual sites listed on the NPL, requests by CSI and/or its directors, officers, and employees for preauthorization to submit claims to the Fund under section 112 of the Act for uncompensated costs incurred by CSI and/or its directors, officers and employees, for liability to third parties arising from actions taken by CSI (including failure to act) with respect to that site, from the date of preauthorization with

respect to that site, to and including the date of certification of the remedial investigation/feasibility study for that site or the date on which CSI terminated its activities with respect to that site, whichever occurred first;

3. CSI shall notify EPA in writing promptly (in no event later than 10 days) upon the termination of CSI's activities with respect to a particular site at which preauthorization was granted;

4. No claims for indemnification may be submitted to the Fund under this Agreement for liability to potentially responsible parties with respect to a particular site unless the responsible party or parties did not enter into an indemnification agreement with CSI and CSI promptly notified EPA, in writing (in no event later than 5 business days after an indemnification agreement was executed) of the identity of each potentially responsible party with which CSI entered into an indemnification agreement with respect to that particular site;

5. With respect to sites at which CSI has obtained preauthorization from EPA, CSI agrees:

   a. to use its best efforts to expedite a remedial investigation/feasibility study ("RI/FS") that is consistent with the National Contingency Plan ("NCP"), 40 CFR Part 300, and any EPA guidance furnished to CSI;

   b. if CSI has reviewed the RI/FS or any draft of the RI/FS, to determine whether the RI/FS or the draft reviewed by CSI, as applicable, is consistent with the NCP and any EPA guidance furnished to CSI, and certify its findings to EPA; c. in cases where a remedial action is undertaken, if CSI has reviewed the remedial action and if CSI receives adequate indemnification from the potentially responsible parties, to determine whether those aspects of the remedial action reviewed by CSI are consistent with the selected remedy and certify its findings to EPA.

Agreed to this 7th day of February, 1985.

President
Clean Sites, Inc.

Acting Administrator
U.S. Environmental Protection
Agency

MODEL SITE SPECIFIC PREAUTHORIZATION OF CLAIM

Pursuant to section 111(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et. seq., and section 300.25(d) of the National Contingency Plan (NCP), 40 C.F.R. Part 300, the Environmental Protection Agency (EPA) hereby authorizes Clean Sites, Inc. (CSI) to submit claims to the Hazardous Substance Response Trust Fund (the Fund) in accordance with section 112 of CERCLA for third party liabilities not fully insured or otherwise indemnified arising from CSI response actions at ________________, ("the Site"). This authorization is subject to the following terms and conditions.

A. Coverage

CSI may submit claims only for liabilities to one or more third parties incurred by CSI or by members of the CSI Board of Directors, CSI officers, CSI employees or [identify other covered individuals] ("covered individuals") while acting within the scope of their employment and/or duties in carrying out the response action authorized in Paragraph B. This authorization does not extend to any other parties.

B. Authorized Response

1. CSI and/or any of the covered individuals referred to in Paragraph A may submit claims for liabilities to a third party arising from activities (including failure to act) that (a) relate to the Site, and (b) occurred during the period from the date of this authorization to and including the date of certification (or such recertification as may be requested by EPA) of

the remedial investigation/feasibility study (RI/FS), as provided in paragraph B.3, or the date of termination of CSI activities with respect to the Site, whichever is earlier. CSI and covered individuals are not authorized to submit claims for liability to a third party arising from activities of CSI or a covered individual acting within the scope of his duties to CSI if such activities are connected with remedial design, remedial construction, or operation and maintenance at the Site, except to the extent that such claims are based on activities which occurred prior to the certification of the RI/FS.

2. CSI may not submit claims for third party liabilities arising from response action for which CSI received compensation from the potentially responsible parties associated with the Site. CSI's receipt of compensation does not include general fund raising from industrial firms or its receipt and transmittal (without remuneration) of funds from potentially responsible parties to third parties who furnish management services with respect to the cleanup of the Site.

3. CSI shall:

a. use its best efforts to expedite an RI/FS of the Site that is consistent with the NCP, 40 CFR Part 300, and any EPA guidance furnished to CSI;

b. if CSI has reviewed the RI/FS or any draft of the RI/FS relating to the Site, determine whether the RI/FS or the draft reviewed by CSI, as applicable, is consistent with the NCP and any EPA guidance furnished to CSI, and certify its findings to EPA;

c. in cases where a remedial action is undertaken at the Site, if CSI has reviewed the remedial

> action and if CSI receives adequate indemnification from the potentially responsible parties, determine whether those aspects of the remedial action reviewed by CSI are consistent with the selected remedy and certify its findings to EPA.

C. Insurance Coverage and other Indemnification

1. CSI represents that it has used it best efforts to obtain the maximum insurance coverage available at an affordable price to protect it and the covered individuals fully or partially against claims of the types subject to indemnification under this preauthorization, and to obtain indemnification for third party liabilities from potentially responsible parties where it has determined that such agreements will not create conflicts of interest and will not disrupt its efforts to coalesce the potentially responsible parties.

2. CSI further represents that it has provided to EPA copies of all effective insurance coverage and indemnification agreements relating to the Site, if any, and documentation to demonstrate to EPA's satisfaction that CSI has used its best efforts to obtain and maintain the insurance coverage and indemnification described in paragraph C.1. Such documentation shall be supplemented by submission by CSI to EPA of copies of all documents changing CSI's insurance coverage, or constituting or changing an indemnification agreement with respect to this Site; such supplements shall be provided by CSI within 30 days of CSI's receipt of the documents.

3. CSI shall continue to use its best efforts to obtain and maintain additional insurance coverage and indemnification agreements with respect to the Site.

D. Limits of Indemnification

1. CSI and covered individuals may submit claims for indemnification for liability for death, bodily injury, or loss of or damage to property of third persons arising out of CSI response activities with respect to the Site that are not fully compensated by applicable insurance coverage or otherwise (including but not limited to any indemnification made available to CSI by potentially responsible parties associated with the Site). Any indemnification by potentially responsible parties shall be applied to any uninsured third party liabilities before the indemnification provided by this preauthorization.

2. Such claims, if supported by relevant facts and law, shall be paid from the Fund in accordance with the terms and conditions of this agreement and in particular, subject to the following limitations: (a) CSI and/or covered individuals will not be paid more than a total of $5 million from the Fund for liabilities arising from activities with respect to the Site; (b) CSI and/or covered individuals will not be paid more than a total of $10 million from the Fund in any fiscal year; (c) payments from the Fund will not exceed appropriations available for CERCLA at the time such payments are made. Unpaid claims may be resubmitted to the Fund. This preauthorization will not be interpreted as implying that Congress will, at a later date, appropriate additional funds to meet any outstanding liabilities.

3. This preauthorization does not apply to claims for:

   a. liabilities to potentially responsible parties associated with the Site (unless the potentially responsible party or parties did not enter into

3. Liabilities for which indemnification is sought from the Fund must be represented by a final judgment or a settlement approved in writing by EPA.

4. Indemnification payments may, in EPA's discretion, be made directly to CSI or the covered individual or directly to the party or parties to whom CSI or the covered individual is liable.

5. No indemnification may be paid from the Fund unless all terms of this preauthorization have been met.

F. Exclusive Remedy

1. Submission of a claim to the Fund for third party liabilities under sections 111(a)(2) and 112 of CERCLA is CSI's exclusive remedy for such liabilities against EPA.

2. Nothing in this preauthorization shall be construed to create, either expressly or by implication, any rights or interest in any parties other than CSI and covered individuals (or their estates).

Date:

Acting Administrator
Environmental Protection Agency

Date:

President
Clean Sites, Inc.

an indemnification agreement with CSI and CSI promptly notified EPA, in writing, (in no event later than 5 business days after an indemnification agreement was executed) of the identity of each potentially responsible party with which CSI entered into an indemnification agreement with respect to the Site).

b. liabilities that arose prior to the date of this authorization.

c. expenses of litigation or expenses of reaching a settlement of any third party liability claims or actions (as distinct from the amount to be paid in any settlement);

d. liabilities that arose as a result of CSI activities which were not in conformance with the authorized response actions described in Paragraph B.1;

e. liabilities that arose as a result of the gross negligence or willful misconduct of CSI or covered individuals; or

f. liabilities for death, bodily injury, or loss of or damage to property of a covered individual occurring within the scope of his/her employment with CSI.

E. Defense of Liability Claims and Payment from the Fund

1. CSI shall promptly notify EPA of any claim or action against it or against any covered individual which reasonably may be expected to involve indemnification from the Fund and shall provide EPA with all relevant documents regarding such claim or action.

2. EPA may, in its discretion, direct, control, or assist in the settlement or defense of any third party liability claim or action against CSI or a covered individual that may potentially involve indemnification from the Fund.

Enclosure II

JUSTIFICATION FOR CSI PREAUTHORIZATION

Section 105(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) provides that the National Contingency Plan (NCP) is to specify roles for private organizations and entities in responding to release of hazardous substances. Further, section 111(a)(2) authorizes the payment from the Hazardous Substance Response Trust Fund (the Fund) of claims for necessary response costs incurred by private parties as a result of carrying out the NCP. Response actions include studies, investigations and other information gathering activities necessary to identify the source and nature of a release, the risk posed, and the alternatives for dealing with the problem. Section 104(b). Under section 300.25(d) of the NCP, a private party that proposes to undertake a response action and to be reimbursed from the Fund must obtain EPA's prior approval of the action and must carry out the response in conformity with the NCP. The advisory action of Clean Sites, Incorporated (CSI) described hereafter, constitutes response actions within the meaning of §104(b) of CERCLA.

(CSI) has requested EPA's approval to submit claims to the Fund for uninsured third party liabilities arising from CSI response actions at uncontrolled hazardous waste sites on the National Priorities List (NPL). CSI was chartered with the goal of expediting the cleanup of such sites by the private parties that are potentially liable for the costs of response under section 107 (PRPs). CSI will facilitate this cleanup by (1) helping achieve agreement on liability faster than the current adversarial process; (2) offering a supplemental method of assuring the public and other parties that the cleanup is adequate; and (3) in some cases, providing expert management and assistance in cleanup projects. As a result of this advisory function, CSI directors, officers and employees may be subject to personal liability for harm to third parties. CSI must use its best efforts to obtain the maximum private third party liability insurance available to it at an affordable price and to obtain indemnification from potentially responsible parties. CSI shall provide EPA with copies of its insurance and indemnification coverage and any documents reflecting changes in such coverage. CSI shall also document, to EPA's satisfaction, its efforts to obtain additional insurance and indemnification coverage. There remains, however, potential uninsured liabilities.

EPA has agreed, for the reasons described below, to preauthorize CSI to submit claims to the Fund for third party liabilities not fully insured or otherwise indemnified, subject to the terms and conditions set out in site-specific pre-authorization agreements.

1. CSI will contribute substantially to the achievement of CERCLA objectives.

At the time that CERCLA was enacted, it was estimated that there were nearly 6000 hazardous waste sites in the United States which needed to be investigated to determine whether a cleanup was required. EPA is now aware of some 18,000 potentially hazardous sites that require further investigation. The NPL is comprised of those sites that have been found to present a chronic or long-term threat and therefore require remedial action. As of September 21, 1984, there were 538 sites on the NPL; an additional 248 sites have been proposed for inclusion on the NPL. Eventually, the NPL may total between 1400 and 2200 sites. In 1985, EPA expects to have work underway on the cleanup of 221 of the NPL sites.

EPA can address only a limited number of the NPL sites each year. To the extent that private parties take action at NPL sites, the Fund's resources and EPA's management capabilities can be preserved for use at those NPL sites where no private action is anticipated. However, it is not enough that there be a private response. The public must be assured that its interests are adequately protected in the course of a private party cleanup. Private response must safeguard the public health, safety, and the environment. The cleanup decisions of private parties must take into account the views of the affected community and reflect the best available scientific and technical knowledge. To the extent that private institutional capabilities can be developed to achieve private party cleanups that meet these standards, the objectives of CERCLA are advanced. EPA has determined that CSI will have the necessary independence and professional integrity to facilitate, on an on-going and systematic basis, private response actions of the quantity and quality that merits EPA support.

A. CSI will address the most serious problems.

As provided in the Articles of Incorporation, CSI is

> organized and is to be operated exclusively as a nonprofit corporation for 'charitable, scientific, (and) educational' purposes

> within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954 . . .; and specifically to encourage, contribute to, and bring about the cleanup of hazardous waste sites in the United States. (Art. III. A)

CSI intends to coordinate its efforts to facilitate private party cleanups with EPA's planned remedial actions to avoid overlapping or duplication of effort. CSI will use the annual Superfund Comprehensive Accomplishment Plan which indicates EPA's planned response actions in each [illegible]ion to develop its own plan of action. CSI will generally address NPL sites and will seek preauthorization from EPA only for such sites. Consequently, the number of remedial actions initiated at the most serious hazardous waste sites will be increased since CSI's efforts will complement those of EPA.

B. The public interest will be represented.

In carrying out its objective of facilitating voluntary cleanups, CSI will perform the following functions:

> (1) coalescing, with respect to particular hazardous waste sites, the relevant potentially responsible parties in support of negotiated settlements providing for clean-up of the sites; (2) scientific and technical review of remedial investigations, feasibility studies, proposals for clean-ups, clean-ups, and related matters concerning specific hazardous waste sites in which the corporation is active; (3) arranging for management teams to manage the clean-up of hazardous waste sites, and monitoring the work of and providing assistance to such management teams. (Bylaws, Art. 2, Sec. 2).

CSI will work with local governments, health and environmental groups, EPA and industry in developing acceptable cleanup plans. CSI may also follow through in a scientific advisory capacity to provide an impartial evaluation of the adequacy of the cleanup and, in appropriate cases, managerial and technical oversight of the remedial projects (Form 1023, Exh. A, p. 3).

CSI has sought, and anticipates receipt of, tax exempt status under section 501(c)(3) of the Internal Revenue Code as a charitable organization. (Application for exemption, Form 1023, August 3, 1984). As an independent charitable organization. CSI will be able to solicit tax deductible contributions from foundations and others to cover part of the corporation's expenses. Thus, CSI will not be entirely dependent on industry funding for its activities.

To ensure that CSI's advice reflects the broad public interest, its Board of Directors will represents industry, environmental groups, and the public. Its initial Board of Directors consists of: Russell Train (Chair), World Wildlife Fund; Joshua Lederberg, Rockefeller University; Douglas Costle, Attorney; William Reilly, Conservation Foundation; Luis Fernandez, Monsanto Company; Edwin Gee, International Paper Company; and Charles Powers, Health Effects Institute. (Articles of Incorporation, Art. IX). Additional and new directors will be elected to the Board "after inviting recommendations from financial supporters of the corporation, the Administrator of (EPA), organizations actively concerned with the cleanup of hazardous waste sites, and other interested members of the public." (Bylaws, Art. V. Sec. 2).

CSI has no stockholders (Articles of Incorporation, Art. V; Bylaws, Art. 2, Sec. 1) and no part of any income to CSI will be distributed to the Board, officers or employees except as authorized payment for services rendered (Articles of Incorporation, Art. VIII. A). To further insure that CSI decisions and advice are free of potential conflict of interest, the Bylaws provide that directors, officers and employees shall not participate in any decision with respect to a particular matter in which the director, officer or employee, or an organization with which such individual is affiliated, has or appears to have an interest (Art. 4, Sec. 8; Art. 6, Sec. 5; Art. 7, Sec. 7). CSI will not receive compensation from the PRPs associated with any site for which it may seek preauthorization from EPA (although CSI may, without remuneration, transmit funds from PRPs to third parties who furnish management services with respect to the cleanup of particular sites).

C. Quality advice will be provided.

CSI will employ, and have available on loan, highly qualified and skilled scientific, engineering, and legal staff to conduct its three basic functions, namely PRP coalescence, site planning, and site technical management. The staff will be intimately familiar with EPA requirements and policies regarding technical cleanup requirements.

D. The public will be informed of the private party activities.

As a tax-exempt charitable organizations, CSI has general financial accountability to the public. Further, CSI Bylaws provide that the corporation will develop and implement policy statements that:

> (1) encourage broad participation, particularly by persons residing near hazardous waste sites, in review of proposals for clean-ups of sites

> and review of actual clean-ups; (2) provide for disclosure to the public, in connection with such review of the same kinds of data and information that the (EPA) customarily discloses to the public when the federal government is carrying out a cleanup. (Art. 2, Sec. 3).

Thus, CSI technical information and site data, including Remedial Investigation and Feasibility Study reports and other documents related to the cleanup will be made available to the public. CSI will conform to the policies and procedures developed by EPA for public participation under the Superfund program.

Calendar No. 13

99TH CONGRESS
1st Session

SENATE

REPORT
99-11

SUPERFUND IMPROVEMENT ACT OF 1985

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 51

together with

ADDITIONAL AND MINORITY VIEWS

MARCH 18 (legislative day, FEBRUARY 18), 1985.—Ordered to be printed

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CONTENTS

Page
General Statement 1

Summary and Discussion:

Title I:

Sec. 101—Indian Tribes 4
Sec. 102—Community Relocation 6
Sec. 103—Offsite Remedial Action 7
Sec. 104—Alternative Water Supplies 7
Sec. 105—Improvements in Notification and Penalties 8
Sec. 106—Hazardous Substances Inventory 9
Sec. 107—Scope of Program 15
Sec. 108—Statutory Limits on Removal 17
Sec. 109—State Credit 18
Sec. 110—Funding of Remedial Action of Facility 18
Sec. 111—Selection of Remedial Actions 19
Sec. 112—State and Federal Contributions to Operation and Maintenance 20
Sec. 113—Siting of Hazardous Waste Facilities 21
Sec. 114—Cooperative Agreements 24
Sec. 115—Access and Information Gathering 25
Sec. 116—Health-Related Authorities 26
Sec. 117—Public Participation 37
Sec. 118—Love Canal Acquisition 38
Sec. 119—Administrative Orders for Section 104(B) Actions 39
Sec. 120—National Contingency Plan (Hazardous Ranking System) 39
Sec. 121—National Contingency Plan 41
Sec. 122—Foreign Vessels 41
Sec. 123—State and Local Government Liability 42
Sec. 124—Contractor Indemnification 42
Sec. 125—Natural Resource Damage Claims 43
Sec. 126—Contribution and Parties to Litigation 43
Sec. 127—Federal Lien 45
Sec. 128—Direct Action 46
Sec. 129—Victim Assistance 48
Sec. 130—Fund Use Outside Federal Property Boundaries 54
Sec. 131—Statute of Limitations 54
Sec. 132—Judicial Review 55
Sec. 133—Pre-Enforcement Review 57
Sec. 134—Nationwide Service of Process 59
Sec. 135—Preemption 59
Sec. 136—Federal Facilities Concurrence 60
Sec. 137—Federal Facilities Compliance 60
Sec. 138—Citizens Suit 61
Sec. 139—Administrative Conference Recommendation 64
Sec. 140—Authorization of Appropriations 68

Title II:

Animal Feed Exemption 69
Hearings 69
Rollcall votes 69
Evaluation of regulatory impact 69
Cost of legislation 70

Additional views of:

Senator Lautenberg 73
Senator Simpson 75
Minority views of Senator Symms 77
Changes in existing law 78

Calendar No. 13

99TH CONGRESS
1st Session

SENATE

REPORT
99-11

SUPERFUND IMPROVEMENT ACT OF 1985

MARCH 18 (legislative day, FEBRUARY 18), 1985.—Ordered to be printed

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Mr. STAFFORD, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 51]

together with

ADDITIONAL AND MINORITY VIEWS

The Committee on Environment and Public Works, to which was referred the bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

GENERAL STATEMENT

PURPOSE AND SUMMARY

S. 51, as amended, amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide $7.5 billion in additional funding over a five-year period. Of this $7.5 billion, $1.030 billion is to be derived from general revenue and presumably $6.470 billion from special taxes. Jurisdiction over the amount and nature of the tax lies with the Committee on Finance.

The overriding purpose of S. 51 is to expand and accelerate the Federal Government's program to clean up and otherwise protect the public health and environment from releases of hazardous substances and wastes. To this end, S. 51 not only provides additional money and time, but makes changes in the law which improve the pace and direction of those cleanup efforts. Title I of the bill establishes cleanup standards to be applied so that human health and the environment is protected in every circumstance; a health program to assure that at each Superfund site a thorough review and assessment is made of the threats posed to human health; a chemicals testing program to develop adequate information on frequently encountered hazardous substances; and a grant program to assist States that wish to establish demonstration systems of assistance for victims of hazardous substances and wastes.

BACKGROUND AND NEED

The modern chemicals technology which has contributed so greatly to this Nation's standard of living has also left a legacy of hazardous substances and wastes which pose a serious threat to human health and the environment. By some estimates, there are over 20,000 abandoned hazardous waste sites in the United States. In large areas, drinking water supplies are contaminated by synthetic organic chemicals, including a large number of supplies which rely upon groundwater, a resource generally thought to be safe from contamination. Unfortunately, the Environmental Protection Agency estimates that for groundwater systems serving less than 10,000 persons, one of every six supplies is contaminated by volatile chemicals and nearly one of every three of the larger systems.

It was to deal with such problems that the Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which quickly came to be known as the "Superfund". The law authorized a five-year, $1.6 billion program to clear up releases of hazardous substances, pollutants and contaminants. It also created a new health agency, the Agency for Toxic Substances and Disease Registry, located within the Department of Health and Human Services. The bulk of the clean up program, however, was delegated to the Environmental Protection Agency.

During the four years which have passed since enactment of the Superfund law, public concern has intensified. In some areas and States, public opinion polls show that the public is more concerned over the problem of hazardous substances and wastes than any other domestic issue.

The Enviornmental Protection Agency has now embarked on an aggressive program to clean up 115 Superfund sites per year and estimates that it will be called up to react to up to 200 emergencies annually. The Assistant Administration has testified that a five-year extension of this program would require an additional $5.2 billion. But this estimate fails to take into account other important and substantial demands on the Fund. It does not, for example, allow leeway for the payment of any claims for natural resource damages, one of the law's most important, but still unimplemented, components. The estimate also does not allow any room for increase in the cost of cleanup per site beyond the current estimate, even though the Agency's previous projections have climbed in the past four years from $2.5 million per site to $6.5 million in 1984 and, most recently, $8.3 million. Finally, the estimate assumes that between now and 1990, which is the expiration date of the five-year extension, there will no inflation. Based on this, it seems clear that even a simple extension of the current program will require substantially more than $5.2 billion. With the addition of new responsibilities in this bill (estimated by the Agency to cost $1 to $1.5 billion over 5 years), the Committee concluded that an appropriate five-year funding level was $7.5 billion, as contained in the reported bill.

STATEMENT OF PRINCIPLES

During 1984 Committee consideration of a Superfund extension, it was noted that neither that bill nor the existing law included a statement of principles or goals and objectives, and several Members believed that such a statement would be worthwhile. The existing statute was designed to help address many of the problems faced by our country as a result of toxic chemical contamination. The statute does not and is not intended to replace other laws which provide the regulatory foundations to address a variety of these toxic chemical concerns. The existing statute and this reauthorization are structured to complement these laws. It is intended to provide the authority and resources to clean up hazardous substance releases.

The problem of hazardous substances in the environment is complex. Nonetheless, certain basic principles setting out the elements necessary to address these problems can be identified. These principles are:

First, to provide ample Federal authority for cleaning up releases of hazardous substances, pollutants and contaminants;

Second, to assure that those responsible for any damage, contamination, environmental harm or injury from hazardous substances bear the costs of their actions;

Third, to provide a fund to finance response actions where a responsible party does not clean up, cannot be found or cannot pay. This fund should be based primarily on contributions from those who have been generally associated with such problems in the past and who today profit from products and services associated with such substances; and

Fourth, to provide adequate compensation to those who have suffered economic, health, natural resource, and other damages.

By implementing the preceding principles, the major objective of the statute will be accomplished: to provide an incentive to those who manage hazardous substances or are responsible for contamination sites to avoid releases and to make maximum effort to clean up or mitigate the effects of any such release.

SUMMARY AND DISCUSSION

TITLE I

INDIAN TRIBES

SUMMARY

This section adds a definition of Indian tribes to the definitions contained in section 101 of CERCLA. The section also provides that the requirements for prior assurances from a State that it will pay a share of the costs of remedial action and the costs of future maintenance shall not apply to remedial actions undertaken on Indian lands; and that in such cases the Federal Government, instead of the State, shall assure the availability of acceptable facilities to manage any hazardous substances removed from the site. The bill also authorizes Indian tribes to recover damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances. The amendment also provides that Indian tribes are to be afforded substantially the same treatment as States under certain specific provisions of CERCLA.

DISCUSSION

CERCLA does not now expressly indicate under what terms and conditions the Superfund program applies to Indian lands. Section 101 of the bill would eliminate the resulting uncertainty and ambiguity by specifying how the program operates within Indian lands.

Subsection (a) of the amendment adds to the Act a new definition of Indian tribes specifying that, for the purposes of CERCLA, the Indian tribes to be covered by the provisions of this amendment include any Indian tribe, band, nation, or other organized group or community, including an Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States. The term does not include Alaska Native regional or village corporations, which are organized for other purposes.

Subsection (b) of the amendment limits the requirements of section 104(c)(3) of CERCLA in the case of responses to be performed on Indian lands. That section provides that before remedial action is to be undertaken under the Superfund program, there must be prior assurances from the State that it will pay a share of the remedial costs and future maintenance costs, and will assure the availability of an acceptable facility to manage any hazardous substances which are being removed from the site. The amendment in subsection (b) would provide that the first of these two requirements—for a State cost share—would not apply in the case of remedial action on Indian lands. The Federal government would instead pay all remedial action and maintenance costs from the Fund. The second requirement—for an available facility to manage any hazardous substances removed from the site—would continue to apply if the site is on Indian land, but the Federal government, not the State or the Indian tribe, would be charged with the responsibility of assuring the availability of the facility. These special provisions are justified by the unique trust responsibility which the United States has for Indians.

The amended requirements for remedial action on Indian lands would apply whenever the remedial action is to be taken on land or water held by an Indian tribe; held by the United States in trust for Indians; held by a member of a tribe if the land or water is subject to a trust restriction on alienation (as is the case with allotment lands that are held by a member of a tribe subject to a prohibition against conveyance to anybody other than another tribal member); or otherwise within the borders of an Indian reservation (such as non-Indian land within a reservation).

Subsection (c) of the amendment expressly provides that the Federal Government, upon determining that an Indian tribe has the capability to carry out any or all of the response authority authorized by section 104 of CERCLA may enter into a contract or cooperative agreement with the tribe for that purpose and reimburse the tribe from the Fund for the expenses incurred under that contract or cooperative agreement. Any such contract or cooperative agreement would fall within the scope of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e. (b)), which provides that "Any contract, subcontract, grant, or subgrant pursuant to * * * any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefits of Indians" shall afford maximum opportunities for employment and training of Indians, and shall require a preference for awards to be made to Indian organizations and Indian-owned businesses in any subcontracting under the contract or cooperative agreement.

Subsections (d) and (e) of the amendment provide that Indian tribes may recover damages for injury to, destruction of, or loss of natural resources caused by the release of a hazardous substance. This provision would give an Indian tribe the same rights under sections 107 and 111 of CERCLA (with respect to natural resources belonging to, managed by, controlled by, or appertaining to the tribe; or held in trust for the tribe; or belonging to a member of the tribe if the resources are subject to a trust restriction on alienation, as is the case of allotment lands held by individual tribe members subject to a condition that they not be conveyed to anybody other than another tribal member) as a State has under those sections (with respect to natural resources belonging to, managed by, controlled by, or appertaining to the State). This provision does not extinguish the United States' trust responsibilities with respect to Indian resources, but merely provides that a tribe itself may act to recover damages instead of relying on the United States to do so on its behalf. Accordingly, another amendment on statute of limitation (section 131 of this bill) would provide that the statute of limitations for asserting natural resource damage claims does not start to run against an Indian tribe until the United States either notifies the tribe that it will not seek damages on the tribe's behalf or allows the normal time period for filing such claims to pass without filing on behalf on the tribe.

Subsection (f) of this amendment would add a new section to title I of CERCLA, specifying that Indian tribes are to be afforded substantially the same treatment as a State under certain specified provisions of CERCLA. With regard to the provisions of section 105, an Indian tribe is to be afforded substantially the same treatment as a State with respect to all provisions other than the provision regarding the inclusion of at least one site per State on the national priority list. As a result, a tribe would be able to establish and submit for consideration by the President priorities for remedial action among known and potential releases affecting the tribe in any manner, but would not be assured that at least one such site so proposed by the tribe would be included among the one hundred highest priority sites.

COMMUNITY RELOCATION

SUMMARY

This amendment expands the statutory definition of "removal" in section 101(23) of the CERCLA to provide the President with the discretion to fund as part of removal: permanent relocation of businesses, residences, and community facilities; payment of principal and interest on business debts during a temporary relocation (until temporary relocation ends or until permanent relocation is accomplished); and payment of unemployment compensation to individuals unemployed as a result of an evacuation or a relocation. The amendment authorizes the President to provide permanent relocation as the most appropriate remedy at a site even when the site is not on the National Priorities List. The payment of principal and interest on business debts is limited to those businesses which are located in the area of an evacuation or relocation.

DISCUSSION

The language is added to clarify the Presidents authority and flexibility to deal with situations such as that presented by dioxin contamination in Missouri. Specifically, the amendment provides that the President can move immediately to permanently relocate the residents of a contaminated site if such a step is found to be cost-effective or may be necessary to protect health or welfare. For example, in some cases it may make more sense—economically and socially—to buy up and seal off a highly contaminated residential area immediately, rather than locate the residents and indefinitely in temporary housing during a protracted, possibly impractical cleanup.

The amendment also gave the President the authority to pay the interest and principal on business debt during a period of temporary relocation. Temporary relocation is intended to protect the residents of contaminated area, but when a community is evacuated, businesses are cut off from their customers. Their income abruptly ceases, while their obligations continue unabated. Thus, they are not protected, but are harmed. This amendment seeks to hold them harmless with respect to business debt only. There is no intent to make up for lost income.

The President also would have specific authority to provide special assistance to individuals unable to work as a result of such an evacuation. In effect, the same assistance would be available as it already available in nature disasters—unemployment and reemployment assistance, food stamps, and grants to meet necessary expenses of serious needs not covered by other aid programs. As under the Disaster Relief Act, this assistance would be provided by Federal agencies with appropriate programs and expertise, using money from the Superfund, and not directly by the Environmental Protection Agency.

This is a clarifying amendment, not substantially altering the scope of intent of CERCLA.

Offsite Remedial Action

SUMMARY

This section amends section 101(24) of the Act to eliminate an existing bias in favor of on-site disposal as the preferred remedial action. The amendment will allow off-site disposal as part of remedial action with no need for any special findings by the President.

DISCUSSION

Section 101(24) of CERCLA, which defines "remedy or remedial action," provides that additional threshold criteria must be met before the President may undertake *off-site* disposal of hazardous substances. This creates a bias against off-site disposal and reflects past Congressional emphasis on disposal on-site as a preferred remedial action.

The objective of the amendment is to eliminate the statutory bias for on-site remedies by making the statute neutral with regard to on-site or off-site remedies. Off-site treatment and other alternative technologies are often preferable to on-site land disposal.

The primary effect of this amendment will be to reduce the proliferation of sites requiring monitoring in perpetuity (by consolidating wastes from many sites into one larger and closely monitored facility), by recognizing the value of permanent off-site remedies such as treatment.

Alternative Water Supplies

SUMMARY

The reported bill defines the term "alternative water supplies" in new section 101(34) to include, but not be limited to, drinking water and household water supplies

DISCUSSION

The current law authorizes the provision of alternative water suplies in removal and both remedial actions. The Committee was made aware of situations in which this authority has been used to replace drinking water but not household water. This section makes it clear that household water must be replaced when this authority is invoked. The prompt provision of household water supplies should minimize the unfortunate situations in which citizens are bathing, washing clothes, and carrying out household chores with water contaminated by a release under this Act.

The replacement of all water, not just that used for drinking, is important for protection of human health. For many chemicals, especially volatile organics, the major exposure route is not through consumption in drinking water, but inhalation after the volatile liquids enter the household atmosphere due to showering, laundering, cooking, etc. Similarly, for some chemicals skin absorption through contaminated clothing can be a significant exposure route. For these reasons, prudence demands that when drinking water supplies are replaced, household water supplies should be replaced as well.

IMPROVEMENTS IN NOTIFICATION AND PENALTIES

SUMMARY

The reported bill amends section 103 of the Act to require prompt notification of State and local emergency response officials to the release of certain hazardous substances. This requirement applies to any release of a hazardous substance with a reportable quantity established under section 102 of one pound or less, and to releases of any other hazardous substance in quantities exceeding that determined by the President by regulation potentially to require emergency responses.

Section 103(b) of the Act is also amended to increase criminal penalties for failure to report to a maximum fine of $25,000 or imprisonment for up to two years, or both. The penalty for subsequent convictions is a fine of up to $50,000 or imprisonment for up to five years, or both. In addition, the maximum fine for destruction or falsification of records under section 103(d)(2) is increased to $25,000, and the maximum fine for failure to comply with an order under section 106 is increased to $10,000 per day.

The reported bill adds a new subsection (g) to section 103, establishing an administrative civil penalty for failures to provide timely notification under subsections (a) or (b). The penalty is graduated, at not more than $10,000 for the first failure, $25,000 for a second violation by the same person, $50,000 for a third violation, and $75,000 for a fourth or subsequent violation. Such penalties may be assessed by the President after notice and an opportunity for hearing. District court review of the penalty is on the record.

DISCUSSION

Section 103(a) of CERCLA requires any person in charge of a vessel or facility to notify the National Response Center as soon as the person in charge has knowledge of any release of a hazardous substance in an amount that equals or exceeds the reportable quantity established under section 102. These notifications serve as one basis for the Federal Government to determine whether response action is appropriate for the release. One problem that has emerged, however, is that notification of the National Response Center may not be relayed quickly enough back to the State and local authorities who must provide the first line of emergency response. The reported bill corrects that problem by requiring immediate direct notification of State and local emergency response officials for releases of highly toxic substances, and particularly those determined by regulation potentially to require response on an emergency basis. In these emergency situations, every minute may count in taking effective action, and immediate notification of local authorities is essential. Ordinarily, delays in making the required notification should not exceed 15 minutes after the person in charge has knowledge of the release, and "immediate notification" requires shorter delays whenever practicable.

The provision of this notice to many State and local agencies may be a problem, particularly in areas where many jurisdictions may be affected. It would be helpful if local contingency plans or emergency response plans would identify a limited number of local agencies for primary notification. It this were done, notice to such agencies would constitute adequate notice under section 103(a) and (b).

The existing statute provides only criminal penalties for failure to report. This amendment increases the criminal penalty and allows the administrative imposition of civil penalties. Administrative civil penalties for violations of notification requirements have several advantages. For example, civil penalties may be imposed in situations where the violations do not merit the sanctions associated with criminal violations. In addition, the availability of an easily-imposed civil penalty will increase the incentive to comply with the notification requirements. Any administrative hearings conducted pursuant to this section are expected to be informal, i.e., not subject to the requirements of sections 554 or 556 of title 5, United States Code. Penalty actions may be brought at any time after the failure to notify. Use or non-use of the administrative civil penalty in no way affects or limits the President's ability to take action under other provisions.

HAZARDOUS SUBSTANCES INVENTORY

SUMMARY

The reported bill adds subsections (h) and (i) to section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. These subsections require affected facility owners or operators to prepare and distribute an inventory of hazardous substances and their characteristics.

A hazardous substance for the purpose of this subsection is as defined under section 101(14) of CERCLA. A mixture containing 1 percent or more of such a hazardous substance is considered to be a hazardous substance under this subsection. The affected facilities are those that manufacture a hazardous substance or store 6,000 kilograms or more of a hazardous substance, and have ten or more full-time employees.

The inventory is required to be completed and distributed within six months after enactment and at least every two years thereafter. Subsection (h) requires affected facilities to file their Material Safety Data Sheets (MSDS), already required by the Occupational Safety and Health Administration (OSHA), as part of the inventory form. OSHA requires affected firms to indicate through the MSDS the name of the substance, its characteristics, adverse health effects due to exposure, proper emergency procedures and handling precautions. Additionally, this subsection requires affected facility owners or operators to provide data on the use, emissions, discharge, and disposal of each hazardous substance. Current emissions information used to satisfy Federal or State statutory environmental reporting requirements may be used on the inventory, where appropriate.

The facility owner or operator is required to distribute the inventory form to State and local emergency response personnel; the State police, health, and environmental departments; area police and fire departments; area emergency medical services; area hospitals; area libraries; and the President.

The President is required to establish an "800" telephone number that is staffed 24 hours per day to answer questions about the inventory and information it contains. The telephone number must also be computer accessible.

The President, or the President's designee, may verify the data contained in the inventory using the authority of existing section 104(e) of CERCLA. Information submitted on the inventory, except health and safety data, is subject to the provisions of 18 U.S.C. section 1905. The penalty for false or knowing omission of material statements is a maximum fine of $25,000 or imprisonment for not more than one year, or both.

State laws requiring equivalent or different information are explicitly not preempted by this amendment.

The amendment also requires that the list of substances for which the inventory is required be updated every two years by the Director of the National Toxicology Program (NTP), in consultation with other appropriate agencies. The list prepared by the NTP shall be promulgated by the President unless the President demonstrates that the risk posed by a particular chemical is not equal to or greater than the risk posed by hazardous substances already listed.

DISCUSSION

The Hazardous Substances Inventory, required under this section, is designed as an initial and continuing monitor on the movement of hazardous substances, an aid to regulatory efforts under environmental statutes in minimizing releases of such substances, and a method for preparing appropriate response authorities to handle releases of hazardous substances in an effective manner. In this way, both human health and the environment can be better protected. It will remedy a deficiency in the amount and availability of current information concerning the production, use, and disposal of hazardous substances.

This amendment is based on the New Jersey right-to-know legislation, which has an inventory component. The State inventory and distribution of the inventory to the community is widely supported by recipients of the inventory, industry, and the general public. In 1978, before the passage of the New Jersey right-to-know legislation, the New Jersey Department of Environmental Protection conducted an industrial survey. New Jersey's experience with the survey is encouraging; within two months State officials received over 7,000 responses to their inventory form.

This amendment and the notification and penalties amendment to section 103(a) of CERCLA work in concert to upgrade the quality and timeliness of information that is provided to State and local emergency response and medical personnel. Other amendments, consistent with those in the reported bill, may be considered by the Committee as possible floor amendments for the purpose of addressing emergency planning for facilities as well as release prevention, containment, and countermeasures.

While there is broad need for additional information about chemicals in commerce, the inventory requirements of this section apply only to those substances considered to be hazardous under section 101(14) of CERCLA. This definition encompasses substances that are designated as hazardous under the Clean Water Act, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act, as well as substances specifically designated under CERCLA.

The list of hazardous substances that is covered by this amendment is intended to be reviewed and modified by the National Toxicology Program, with the consultation of appropriate Federal agencies, every two years. The Administrator is to promulgate this list within six months unless there is a reasonable basis for concluding that the substances added by NTP do not present an equal or greater risk than those substances already listed. In making this determination, it is expected that the Administrator will consider both acute and chronic health effects and environmental effects of the substance in question.

For the purpose of this amendment, a "hazardous substance" includes mixtures that contain one percent or more of such hazardous substances. This mixture rule is similar to that under the Hazard Communication Standard promulgated by OSHA, and is different from the RCRA mixture rule, under which all mixtures containing any amount of a hazardous waste are considered hazardous unless specifically delisted.

This use of the mixture rule in the definition of "hazardous substance" does not extend the coverage of this amendment to finished consumer products such as those that might be found in a retail store, where such products do not present a threat of a release from a facility. This is consistent with the definition of a "facility" contained in existing section 101(9) of CERLCA, and its reference to consumer products.

Not all facilities that have hazardous substances of the premises are covered. The scope of the amendment is restricted to include all manufacturers of a hazardous substance or facilities that store more than 6,000 kilograms of such a substance after the date of enactment. This latter requirement is consistent with permitting requirements under the Hazardous and Solid Waste Amendments of 1984, which allow certain small quantity generators to store not more than 6,000 kilograms of hazardous waste without a permit for up to six months (rather than the general rule of 90 days). A final limitation is that facility owners or operators must have at least ten full-time employees.

The contents of the inventory are based on the New Jersey right-to-know legislation and the Material Safety Data Sheet required by OSHA. The MSDS requires primarily identification of the substance and health and safety data so emergency response and medical personnel can appropriately respond to releases of and exposure to the hazardous substance. Recognizing that this is insufficient to provide a full view of possible exposure pathways, the amendment also requires facility owners and operators to provide data on the emissions, discharges, and disposal of the hazardous substance. The inventory will therefore begin to track substances that may be constituents of future Superfund sites.

The President should use the form that follows as a basis, consistent with this subsection, for the inventory form the President is required to publish within 60 days after enactment. As stated in the amendment, this requirement is exempt from the Paperwork Reduction Act and the Office of Management and Budget Circular A-40 so that this deadline will be met by the President.

Form COM-021 B
Rev. 2/80

State of New Jersey
Department of Environmental Protection

Page ______ of ______

PART II

SELECTED SUBSTANCE REPORT

COMPLETE ONE FORM FOR EACH SELECTED SUBSTANCE

FOR DEP USE

Name and Location of Plant	I.D.
Selected Substance Name / CAS #	
Briefly Describe Its Use On The Site:	

	COMPLETE THE FOLLOWING INFORMATION FOR THE PLANT BASED ON 1979 USAGE	ENTER THE ACTUAL OR ESTIMATED AMOUNTS	USE THE REQUESTED UNITS	CHECK ONE	
				ACTUAL	ESTIMATED
Through-put quant.	4. QUANTITY PRODUCED ON SITE		lbs/yr.		
	5. QUANTITY BROUGHT ONTO SITE		lbs/yr.		
	6. QUANTITY CONSUMED ON SITE		lbs/yr.		
	7. QUANTITY SHIPPED OFF SITE AS (OR IN) PRODUCT		lbs/yr.		
	8. MAXIMUM INVENTORY		lbs		
Air Emissions	9. TOTAL STACK EMISSIONS OF SELECTED SUBSTANCE		lbs/yr.		
			max lbs/day		
	10. TOTAL FUGITIVE EMISSIONS OF SELECTED SUBSTANCE		lbs/yr.		
			max lbs/day		
Wastewater Dis.	11. TOTAL DISCHARGE OF SELECTED SUBSTANCE INTO SURFACE WATER		lbs/yr.		
			max lbs/day		
	12. TOTAL DISCHARGE OF SELECTED SUBSTANCE INTO PUBLICLY OWNED TREATMENT WORKS		lbs/yr.		
			max lbs/day		

. DISPOSAL OF WASTE CONTAINING THE SELECTED SUBSTANCE

LOCATION OF FINAL DISPOSAL SITE NAME AND ADDRESS	PHYSICAL STATE TABLE A	DISPOSAL METHOD TABLE B	QUANTITY OF SELECTED SUBSTANCE DISPOSED (lbs)	FOR DEP USE

TABLE A
PHYSICAL STATE

M-01 Solid
M-02 Liquid
M-03 Slurry
M-04 Sludge
M-09 Other (specify)

TABLE B
DISPOSAL METHODS

W-01 Composting
W-02 Evaporation
W-03 Holding Tank
W-04 Incineration
W-05 Injection Well
W-06 Lagoon
W-07 Land Burial
W-08 Land Spreading
W-09 Neutralization
W-10 Ocean
W-11 Recycling
W-12 Sanitary Landfill
W-13 Surface Water
W-14 Subsurface System
W-15 Pyrolysis
W-16 Spray Irrigation
W-17 Stored On Site
W-98 Other (specify)

In compiling this information, the amendment states that emissions reporting information used to satisfy Federal and State environmental laws may also be used on the inventory, where appropriate. This means that such person would not have to undertake a new waste monitoring program, for example, provided data collected for other purposes are accurate. However, it is also important to assure uniformity within the database when inventory reports from various persons are combined. Therefore, the President may require persos submitting inventory forms to convert existing data to common units for the purpose of reporting under this subsection.

In order to facilitate consistency in reporting, facility owners and operators submitting inventories should state the method relied upon for their emissions calculations, if the original data was in quantities different from those required under the hazardous substances inventory. The President may wish to promote further standardization and reliability be developing methods, or including methods from other programs, when publishing the inventory form for calculating or estimating emissions. These can be used by affected facility owners and operators so units are calculated or estimated by reliance on the same methodology.

Additionally, estimates may be used where the information is not otherwise reasonably ascertainable. Information is reasonably ascertainable under this subsection where it is generally known to others similarly situated or is capable of being obtained at reasonable cost. Thus, in situations where owners or operators of similarly sized facilities generally know what their hazardous substances emissions are, all other facilities in the same category should provide similar information.

The inventory is to be distributed by the facility owner or operator to State and local entities specified in the amendment and the President and to the public upon request. The purpose of this distribution is to provide adequate and timely circulation of the inventory so those who might be affected by a release would have access to relevant data concerning the hazardous substance. Several witnesses testified as to the difficulties which confront emergency response personnel when they are called upon to respond to the release of a substance with unknown characteristics and dangers. Access to the information contained on the inventory should diminish this problem. In addition, the amendment creates a mechanism for providing basic information about hazardous substances, their releases to the environment, and potential health effects to the general public. In a report to the Committee, the Congressional Research Service estimated that 96 million persons live in proximity to facilities manufacturing chemicals.

In order to meet the goals of making the inventory available widely and in a timely fashion, the President is requiring in subsection (h)(6) to establish a toll-free telephone number that is staffed 24 hours a day. The President is required to inform State and local officials within 60 days of establishment of such telephone number and its accessibility by computer, so States may utilize this information, by computer or other means. The President should conduct educational programs to alert the public about the availability of the "800" number and the inventory. This provision is intended to expand the access to the inventory. Similarly, the requirement that the number be computer accessible enlarges the population that can gain meaningful access to information about these hazardous substances. This information should be computerized as quickly as possible in order to make it accessible to Federal (within EPA as well as outside the agency) and State officials and public. The President may wish to utilize the information management systems developed by the EPA Office of Toxic Substances for this purpose, rather than create a new system. Modification of the existing system to accommodate information obtained under this section can be accomplished within three months at a cost of approximately $50,000, according to the EPA. It is expected that the President will maintain the inventory information.

The amendment also provides that the President may verify data submitted in the inventory, using the authority in section 104(e) of CERCLA. The same paragraph addresses the issue of protected business information. Protection is afforded under 18 U.S.C. Section 1905 for qualified data, except for health and safety data (including release data), which is specifically denied protection under existing section 104(e)(2) of CERCLA. As in other environmental laws, release data is not entitled to protection. It is expected that few, if any, claims for protection would be made, and all such claims would be closely scrutinized by the Administrator and the States. This is particularly true regarding any potential claims of confidentiality for identification of the hazardous substance. The value of the health and safety data (which is excluded from protection) and other information required in the inventory is dependent upon some identification of the hazardous substance.

Penalties for failure to comply with the provisions of the inventory amendment are the same criminal sanctions adopted for other violations of Superfund: $25,000 maximum fine upon conviction and up to one year imprisonment or both.

Many states have responded to the lack of adequate data about hazardous substances by enacting their own legislation. While this amendment establishes a national inventory system, it in no way preempts States from continuing or initiating their own inventory of hazardous substances that are within their borders, regardless of whether the information required by the States is equivalent or in addition to the information required to be provided in this section.

Compliance with this section over the next few years should provided a sound basis for determining where hazardous substances are being produced and what is happening to them after they are produced. This information is essential in reducing human and environmental exposures to hazardous substances.

Scope of Program

SUMMARY

This section amends section 104 (response authorities) to clarify that the President should give primary attention to releases which may present a public health threat and that the President has the discretion to decide when responsible parties are authorized to conduct response in lieu of Fund-financed response. It also makes more explicit the fact that certain circumstances which may present genuine threats to human health, welfare or the environment are not within the scope of CERCLA.

DISCUSSION

Authority to respond

Section 104(a)(1) of the Act currently authorizes response action "unless the President determines that such removal or remedial action will be done properly by the owner or operator of the facility . . . or by any other responsible party." Some parties have argued that the President cannot act unless the President determines that no other person will properly perform the response. Such an interpretation would result in extensive negotiations and evaluations that are time-consuming and that delay response. This amendment clarifies that the Federal government may authorize the owner or operator of any other responsible party to perform the response action if the President determines that such action will be done properly. This determination need not be made in every case. The President may undertake a response action without making such a determination. The Federal government is not precluded from conducting a response action, merely because responsible parties have indicated a willingness to take some from of response action.

Public health threat

Although CERCLA broadly authorizes response to releases or threatened releases of hazardous substances pollutants, or contaminants into the environment, threats to public health should be the first priority of Superfund response efforts. This does not, however, preclude response to situations which pose solely an environmental threat if the President considers this appropriate.

Clarifying the program's scope

CERCLA response authorities are extremely broad, but there are nevertheless situations, some of which may be life-threatening, which are not within the law's scope. The Agency has encountered some difficulties, primarily political, in restraining CERCLA responses to the scope of the law. For this reason, S. 51 proposes to make more explicit certain areas which the law does not cover.

Specifically, S. 51 makes more clear the exclusion from remedial or removal action of a release or a threat of a release:

—of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

—from products which are part of the structure of, and result in exposure within a facility; and

—into public or private drinking water supplies due to deterioration of the system through ordinary use.

The provision on naturally occurring releases excludes from remedial and removal action situations such as: arsenic trioxide contamination of groundwater that is a result of natural processes such as rainfall; concentrations of hazardous elements in the earth's cusrt; naturally occurring (and undisturbed) radioactive rocks or soils; disease or contamination resulting from animal waste (e.g. beaver excrement); or high concentrations of metal (e.g.

selenium) in surface or groundwater which results from the natural leaching of these metals from the undisturbed soil.

Situations that are not addressed by this amendment and that are therefore eligible for CERCIA response action include, for example, hazardous substances in a lagoon which are released due to overflow caused by rainfall, or drums that have deteriorated through exposure to the elements.

The Environmental Protection Agency has received requests to take removal or remedial action in situations where the contamination was from building materials used in the structure and was creating an indoor hazard. This section would clarify that such situations are not subject to remedial or removal action.

In addition, although CERCLA can and does address contaminated public or private drinking water supplies, some communities have begun to view CERCLA as a means of expanding and repairing existing drinking water supplies. If the drinking water supplies are contaminated as a result of general deterioration of the system rather than as a result of the release of hazardous substances, CERCLA remedial or removal action is not within the law's scope, even if there is a threat to human health.

Savings clause

New subsection (b)(4) provides that, notwithstanding these exclusions, the President can provide remedial or removal action if the President believes that the release or threat of release constitutes a public health or environmental emergency and no other person with the authority and capability will respond in a timely manner.

STATUTORY LIMITS ON REMOVAL

SUMMARY

This section amends section 104(c)(1) of the Act to provide an additional and independent criterion for waiving the statutory limits on removal actions and increase the six month duration limitation to one year. The new criterion permits removals to exceed the $1 million cost and one year duration limitations if the response action is "appropriate and consistent with permanent remedy." The amendment assures that removals accomplish a more complete response, if such response is appropriate in that situation.

DISCUSSION

Section 104(c)(1) of CERCLA limits removal actions to six months in duration and $1 million in cost unless certain waiver criteria are met. These criteria include: a finding that continued action is necessary to prevent or mitigate the emergency and to protect public health and the environment, and that assistance would not otherwise be provided on a timely basis.

The primary effect of the amendment will be to enhance the President's ability to implement the most effective response in removal situations. Generally the amendment will assure that, where appropriate, the first operable units of remedial actions may be considered removals. This will provide the Agency with increased flexibility to quickly initiate the appropriate response action. This ability to implement a response quickly will enhance efforts to contain the migration of hazardous substances. Thus, it will result in increased public health and environmental protection. Responses may also become less costly, since hazardous substances may be contained before they migrate to a much larger area requiring greater response.

STATE CREDIT

SUMMARY

Subsection (a) of this section of the bill amends section 104(c)(3) of current law to allow a State to receive credit for its expenditures at a Superfund site made prior to December 11, 1980, and to apply such a credit to the State's share of cleanup costs at other Superfund sites.

Subsection (b) of this section allows States to receive credit farm the Environmental Protection Agency for the expenditure of State funds for cleanup costs at sites on the National Priority List, in advance of any obligation of Federal funds to those sites. The credit could then be applied against the State share of cleanup costs at other Superfund sites.

In order to receive this credit, a State is required to have entered into a cooperative agreement of contract for this purpose under new section 104(d)(1) of the Act. The credit will only be granted to the State for reasonable, documented, direct out-of-pocket non-Federal funds, and only in accordance with the cooperative agreement.

DISCUSSION

Under current law, credit that is granted for certified State expenditures made during the "window" period of January 1, 1978, to December 11, 1980, can be applied only toward work at the site at which the credit was earned. This section allows the State to apply a credit for expenditures during this period to other sites if little or no work remains to be done at the original site, or if the certified expenditures exceed the State's share of the cleanup costs at the original site.

The purpose of the second part of this amendment is to provide the States with incentive to initiate responses at sites for which cooperative agreements and contracts have been signed at the fastest possible pace. This provision is intended to complement the amendment to the Act that would allow States to enter into multisite cooperative agreements. Included in these agreements could be specification of the types of actions for which credit is allowed under this section.

FUNDING OF REMEDIAL ACTION AT FACILITY OPERATED BY A STATE OR POLITICAL SUBDIVISION

SUMMARY

The reported bill amends section 104(c)(3)(C)(ii) of the Act to impose the 50 percent or greater cost-share only at those facilities operated directly or indirectly by the State or political subdivision.

DISCUSSION

The 50 percent cost-share will be imposed on the basis of operation rather than ownership of the facility at the time of disposal of hazardous substances. It will apply to sites owned and operated by the State; sites owned by the State and operated by a private party under a contract or lease with the State; and sites owned by a private party but operated by the State. The objective of the amendment is to impose the cost-share on States only in those cases where the State is involved in the operation of the facility, either directly or indirectly.

The amendment also provides that, for purposes of this amendment only, the term facility will not include navigable waters or the beds underlying those waters, and thus a 50 percent cost share will not be imposed on States for response actions at such facilities.

SELECTION OF REMEDIAL ACTIONS

SUMMARY

New section 104(c)(4)(A) requires that evaluations of the cost-effectiveness of proposed alternative remedial actions reflect long-term, as well as short-term costs. The long-term cost must include evaluation of the operation and maintenance costs throughout the lifetime of the proposed remedy.

New section 104(c)(4)(B) provides that actions leading to a permanent solution to waste contamination, such as treatment, are to be preferred; short-term containment of relief measures such as transferring waste from one site to another is to be considered the least favored alternative.

New section 104(c)(4)(C) defines a cleanup standard for remedial actions taken under this Act, either Fund-financed or in enforcement actions (including settlements and consent decrees). All remedial actions must attain a degree of cleanup and control of further release which, at a minimum, assures protection of human health and the environment. However, the specific remedy at each site should be relevant and appropriate to the circumstances of the site.

New section 104(c)(4)(D) provides that on-site cleanup or containment actions are not required to be permitted under subtitle C of the Solid Waste Disposal Act, section 402 or 404 of the Clean Water Act, or section 10 of the Rivers and Harbors Act of 1899, but that such actions must satisfy the protection of human health and the environment requirements of subparagraph (C).

New section 104(c)(4)(E) retains language currently in the statute, subject to the new, more specific requirements of this paragraph. This language requires that when selecting appropriate remedial actions, the need to protect human health and the environment at the particular site in question must be balanced against the amounts which would then be available in the Fund for other sites.

DISCUSSION

Under current law, the Administrator is required to select cost-effective remedial actions. New section 104(c)(4)(A) requires that evaluations of the cost-effectiveness of proposed alternative remedial actions reflect long-term, as well as short-term costs. Long-term costs include evaluation of the operation and maintenance costs throughout the lifetime of the proposed remedy. Consideration of long-term costs will undoubtedly lead to more environmentally sound decisions in favor of treatment of hazardous wastes as opposed to short-term measures such as the mere relocation or transfer of contaminated material to another site.

Similarly, subparagraph (B) stresses the need to move toward complete destruction of hazardous substances.

Subparagraph (C) addresses a number of issues related to the degree of cleanup to be achieved by remedial actions. At a minimum, all remedial actions must assure protection of human health and the environment. However, conditions differ at each site. Therefore, the specific remedy should be relevant and appropriate under the circumstances present at each site. For example, the mix of wastes and the size, topography, and geology and other important factors for one site will likely vary from any other. No rigidly uniform remedy would likely be the best at all of these sites. This subsection provides flexibility to the President in the choice of design standards selected for remedial action, rather than mandating, for example, the uniform implementation of design standards under section 3004 of the Solid Waste Disposal Act. The basic performance standard of subtitle C, protection of human health and the environment, does always apply.

Case-by-case distinctions should be made in design requirements where appropriate. Remedial actions can therefore be evaluated under a broad spectrum of factors including cost effectiveness and technical performance, provided that the remedy chosen always protects human health and the environment.

The so-called Fund-balancing provision of subparagraph (E) is considered necessary to assure that sites are cleaned up to the greatest degree possible without sacrificing the protection needed at other sites. However, the Agency may not use this provision to unnecessarily delay cleanup actions because of this balancing test, but rather should assure that available funds are used to attack the most important problem sites. Human health and the environment must be protected in all remedial actions, at a minimum.

STATE AND FEDERAL CONTRIBUTIONS TO OPERATION AND MAINTENANCE

SUMMARY

The reported bill adds new paragraphs to section 104(c), providing that the cleanup of contaminated ground and surface water at sites on the National Priority List be considered remedial action until protection of human health and the environment is achieved, or for a period of up to 5 years after the commencement of operation of ground or surface water treatment measures, whichever is earlier. Under paragraph (6), after the special taxes and general fund authorizations of this reauthorization bill are obligated, the costs of extended remedial action under paragraph (5) will be paid out of response costs recovered to the Fund for responsible parties.

DISCUSSION

This section provides that the funding for the on-site and off-site cleanup of contaminated ground and surface water be shared on a 90 percent Federal and 10 percent State basis for five years following the construction and commencement of operation of such treatment measures. In the cases where pumping and treating of water or other technology is required, the five-year period would begin after this technology is made operational for continuous use or until protection of public health and the environment is assured, whichever is earlier. Under current EPA policy, the costs of such operation are provided on a 90 percent Federal share for only one year.

The Committee felt that it was important to specify what the financial obligation of the Superfund is in regard to the cleanup of ground and surface water contamination at sites on the National Priority List. The current practice of the Environmental Protection Agency is to finance remedial action activities such as the removal of drums, excavation of soil, and initial treatment of ground and surface waters on the 90/10 basis provided in section 104(c)(3). Under this policy, the long-term treatment of contaminated water becomes a State responsibility one year after all other remedial actions are completed. The continued treatment of contaminated water, which is in actuality major part of the cleanup program, is considered by EPA to be an operation and maintenance cost.

The distinction between remedial action and operation and maintenance should be based on the degree of cleanup that has been achieved. This section determines that the cleanup of ground and surface water, whether on or off-site, is a remedial action until the protection of human health and the environment is assured. This is the minimum requirement for remedial action under section 104(c)(4), as amended.

The Environmental Protection Agency expressed some concern about the possibility that the Agency would have to set aside funds during this five-year authorization period to finance long-term cleanups of contaminated ground and surface water. The reported bill addresses this concern by putting a five-year time limit on the mandatory involvement of the Federal fund in such treatment expenses, and by specifying that expenses accrued after the reauthorization period of the Act be paid exclusively from responsible party cost recoveries.

SITING OF HAZARDOUS WASTE FACILITIES

SUMMARY

The reported bill amends section 104(c) by adding a new paragraph providing that, effective three years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to facilities in compliance with the hazardous waste regulatory program under subtitle C of the Solid Waste Disposal Act for the treatment or diposal of all that state's hazardous wastes for the next twenty years.

DISCUSSION

A critical step in the implementation of a rational, safe hazardous waste program is the creation of new facilities employing the most advanced waste management technologies. But to establish newer, improved facilities, sites on which these facilities can operate must be found and made available. Although most States have enacted or have pending some form of siting legislation, few, if any, have developed policies and siting programs that will assure continued facility capacity in the long term. Recognizing that, as a general rule, States are not moving aggressively to avoid the creation of future Superfund sites, an amendment on siting of hazardous waste facilities was adopted by the Committee.

This section of the bill provides that, effective three years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to RCRA-approved facilities for the treatment or disposal of all of that State's hazardous wastes (other than those wastes that will be recycled) for the next 20 years.

Such assurances must be made to the President. The President is expected to delegate the Federal responsibilities under this amendment to the Administrator of the Environmental Protection Agency.

The availability of funds for "removal actions" is not affected. The short-term, emergency cleanup of, for example, a road side spill or a stack of drums that are about to explode could proceed. What will be withheld are funds for "remedial actions," the long-term, permanent clean-up of sites on the National Priority List.

To avoid a cutoff of funds, each State is required to develop State policies and siting programs that will make the best use of existing facilities in the short term and will assure continued facility capacity in the long term. The details of the siting process will differ depending on the circumstances of each State.

A site in every State is not required. In some cases, multi-state efforts may be appropriate. Use of binding agreements through interstate compacts guaranteeing access to a facility is only one example of how a State may provide the requisite assurances. State or local ownership and operation of facilities or contracts with private facilities may also suffice.

The rationale for this requirement is straight-forward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. Pressures from local citizens place the political system in an extremely vulnerable position. Local officials have to respond to the fears of local citizens. The broader social need for safe hazardous waste management facilities often has not been strongly represented in the siting process. A common result has been that facilities have not been sited, and there has been no significant increase in hazardous waste capacity over the past several years.

In 1976, the Resource Conservation and Recovery Act (RCRA) was passed, mandating the construction of needed hazardous waste facilities and placing the responsibility for siting the facilities with the States.

Unfortunately, when RCRA was first passed, Congress failed to anticipate the intensity of public opposition to new and expanded waste management facilities. While everyone wants hazardous waste managed safely, hardly anyone wishes it managed near them. This is the NIMBY syndrome (not in my backyard). Yet if the RCRA and Superfund programs are to work—if public health and the environment are to be protected—the necessary sites must be made available.

This is not a new issue. In 1976, RCRA directed the States to develop plans for the management of their wastes, including hazardous wastes. In 1980, EPA, the National Governors' Association and numerous other groups and institutions produced reports, handbooks and resolutions on the siting issue.

Section 104 of Superfund already requires that each State assure the availability of a RCRA approved facility for management of materials removed from a site before remedial action can begin. Unfortunately, that condition has been largely ignored by EPA and the States.

Most States have enacted, or have pending some form of siting legislation. Some have chosen to establish siting approval boards; some have chosen to authorize preemption over local zoning laws; some have authorized State acquisition, operation and maintenance of sites through existing institutions or through quasi-public corporations. Which, if any, of these approaches will work remains to be seen. Merely having enacted such legislation, however, will not satisfy the requirements of this section. Each State must provide assurances that their legislative program can work and will be used.

There are a number of obstacles to siting new hazardous waste management facilities. These include:

—First, lack of cooperation among interested parties who distrust one another's motives and doubt the willingness of the other parties to make any substantial concessions to alleviate their concerns. Use of compensation, mitigation or other measures such as land value guarantees or the posting of bonds to finance continued water supply testing and the like might help alleviate some of these problems.

—Second, lack of reliable, objective information or criteria for evaluating proposals and sites and citizens' distrust of technical information provided by government or industry.

—Third, insufficient public perception of the need for new treatment facilities.

—Finally, the most distressing problem, leadership by government officials at all levels is sorely lacking.

A successful siting program should recognize three key principles:

First, a complete technical analysis of all proposed sites is essential prior to the selection of a particular site. This analysis should take into account both environmental effects (e.g. from the hydrology, geology, ecology, etc.) as well as factors based on the proximity and relation of the facility to residences and institutions.

Second, site selection must be accompanied by full public participation. This involvement should start at the beginning of facility planning, and should continue through the site selection and approval process. It should be accompanied by a broad-scale public education effort, since the public needs to become a knowledgable partner in site selection decisions.

The opposition of the public stems in part from the fact that the procedures for citizen involvement have been neither well thought out nor carefully applied. Further, the standard mechanism for involving the public—the public hearing routinely becomes a crowded, highly emotional exercise in mob psychology. In addition, the media often highlight the fears of the opponents, making rational decisions even more difficult to make.

Third, the process of site selection should find a way to transcend blaket local vetoes. No Community should be able to remove itself from consideration on political grounds alone. Everyone must take responsibility for assuring that adequate sites are available.

Cooperative Agreements

SUMMARY

The reported bill amends section 104(d)(1) of the current law to make clear that contracts and cooperative agreements with States can be on a multi-site basis. In addition, specific activities including enforcement are identified as eligible for funding under such agreements.

DISCUSSION

The Superfund program will be most effective if, to the maximum extent possible, Federal and State governments work in a cooperative manner to speed the cleanup of hazardous releases of hazardous substances, pullutants and contaminants. The Act recognizes the importance of the State role by authorizing the President to enter into contracts or cooperative agreements with States for carrying out any or all of the cleanup authorities included Superfund.

The Environmental Protection Agency originally interpreted this authority to permit only contracts or cooperative agreements on a site-by-site basis. However, the Agency has subsequently recognized the advantages to both the Federal Government and the States of permitting "multi-site" cooperative agreements, so that actions at several sites can be grouped under a single contract. S. 2892 explicitly clarifies existing law to authorize the President to enter into contracts or cooperative agreements with States on a multi-site basis as well as on a single site basis and to indicate those type of actions for which the Hazardous Substance Response Trust Fund may be used by the States.

The amendment also authorizes the Administrator to provide Funds to States through contracts or cooperative agreements for the reasonable costs of undertaking enforcement actions against responsible parties for the purpose of securing site responses by those parties.

The Environmental Protection Agency only recently adopted the policy of allowing multi-site cooperative agreements. This amendment assures the continuity of this policy. In addition, the amendment authorizes States to enter into such multi-site agreements on both a prospective and retrospective basis. The first multi-site cooperative agreement granted but EPA, on a prospective basis, was to the State of Pennsylvania, for actions at 12 sites not previously addressed under cooperative agreements. The amendment also permits States to combine existing cooperative agreements under new multi-site agreements (i.e., to enter multi-site agreements on a retrospective basis). EPA is directed to establishs guidelines whereby States, at appropriate times, may be permitted to negotiate new cooperative agreements which combine any or all of their existing single site agreements.

The amendment lists those types of actions which are considered eligible costs under cooperative agreements. In addition to response costs, these include related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administrative of remedial activities authorized by the act. With the exception of enforcement costs, all of the above costs are currently eligible and therefore do not constitute a change from current policy.

Enforcement costs are included in this list to improve the capability of States to undertake enforcement actions against responsible parties for the purpose of securing site response by those parties. Eligible enforcement costs include, but are not limited to, the costs of information gathering, discovery, expert witnesses and other expenses related to litigation or administrative enforcement, and State oversight of private party responses to the extent such oversight costs are not otherwise provided by those private parties.

Nothing in section 104(d)(1) shall preclude the President from taking a separate enforcement action against those parties included in a State enforcement action, nor require him to enter into a cooperative agreement or contract prior to undertaking a Federal enforcement action.

One substantial advantage of multi-site cooperative agreements is that they will better enable EPA and the States to more effectively and efficiently use and target their limited resources. Under a multi-site agreement, a State would be able, with EPA's concurrence, to shift funds from one site to another included under the same multi-site cooperative agreement. This provision will allow States and EPA to quickly deobligate funds from sites for which they were originally slated but no longer needed, or not needed at the moment, and reobligate the funds for activities needed at another site, without going through the current lengthy process of EPA withdrawing the monies to the Hazardous Substances Response Trust and then negotiating a new cooperative agreement for reobligating the funds to the State.

Access and Information Gathering

SUMMARY

As amended by the reported bill, section 104(e) of CERCLA restates the authority of the President to request information concerning the treatment, storage, disposal, or handling of hazardous substances, and to enter premises where hazardous substances were generated, stored, treated, disposed, or transported. This amendment clarifies that the President also has the power to compel compliance with information and access requests and clarifies and confirms the broad reach of the President's authority.

DISCUSSION

Currently, authority to enforce information requests under CERCLA is implicit. In addition, there is no explicit language to compel parties to provide access to the site or adjacent areas. Courts have consistently granted the government's requests for access and information; moreover, landowners frequently provide access and information voluntarily. Express statutory authority, however, will encourage private parties to consent to access and information requests. The amendment provides this express statutory authority, and also facilitates the process by which the President can obtain judicial enforcement of requests for information and access. Administrative orders issued under this section will be within the preclusion of pre-enforcement review provided by section 113 of CERCLA as amended.

This amendment establishes procedures for the President to issue orders for access and information. The President is to notify potential recipients of orders and provide an opportunity for consultation. The amendment also provides a mechanism for seeking a Federal court injunction barring interference with information or access requests. Penalties are specified for violations of administrative orders.

The amendment confirms the broad access authority that the Congress originally intended when CERCLA was enacted in 1980. Access is authorized concerning establishments or other places or properties not only when hazardous substances are, may be, or have been generated, stored, treated, disposal of, or transported from, but also where there has been or may have been a release or threatened release. Further, entry is permissible to determine the need for response or the appropriate response or to effectuate a response. Thus, government representatives, including authorized contractors, may not only enter sites of known or suspected releases themselves, but also may enter adjacent properties to determine whether a release of threatened release has occurred or to undertake other activities necessary to a response action. The amendment also preserves the President's authority to obtain access or information through any other lawful means. For example, in exigent circumstances, where the President has a reasonable basis to believe that documents may be destroyed or site conditions changed if a request for access or information were made, the President may obtain an ex parte warrant for entry, access to documents, sampling, or other needed activities.

HEALTH RELATED AUTHORITIES

SUMMARY

The reported bill amended section 104(i) of the Act by adding twelve new paragraphs relating to health assessments, health studies, and other authorities of the Agency for Toxic Substances and Disease Registry (ATSDR). These are described in detail in the Discussion below. In addition, the bill amends section 111(c)(4) to clarify that all the work of ATSDR, including toxicologic and other laboratory studies, health assessments, and epidemiologic studies, are to be paid out of Superfund. A new section 111(n) is added, making available not less than 5 percent of the annual appropriation out of the Fund (or $50,000,000, whichever is less) for each fiscal year, directly to the Agency for Toxic Substantes and Disese Registry. ATSDR is expected to cooperate and communicate with the Environmental Protection Agency in the implementation of these authorities.

The bill amends section 3019 of the Solid Waste Disposal Act, requiring certain information on exposure to hazardous substances released from hazardous waste disposal facilities to be made available by the owner or operator. Finally, the reported bill makes several technical amendments to section 104(i) of current law.

DISCUSSION

From the outset of its efforts to address the problem of toxic chemicals, the Congress has been concerned by the likelihood that releases of hazardous substances, pollutants and contaminants into the invironment pose a significant threat to public health. The public, as well as the scientific community, has suggested that facilities or release of hazardous substances and other toxic chemicals may be threating the health of nearby residents due to their presence.

Partially for this reason the Comprehensive Environmental Response, Compensation and Liability Act contains section 104(i), establishing the Agency for Toxic Substances and Disease Registry (ATSDR), which is required to undertake and coordinate health-related activities for toxic chemicals generally and superfund specifically.

Despite this requirement, ATSDR was not immediately established by the Secretary of Health and Human Serices. A lawsuit by outside private organizations was ultimately necessary to compel the Agency's establishment.

To date, ATSDR has failed to receive adequate funding under the Superfund program, and without additional assured funds and personnel the Agency will be unable to carry out is mandated functions. The health-related amendments in S. 51, as reported, are designed to improve upon the original health authorities contained in section 104(i) of CERCLA. In general, the health-related authorities of the Act have not been adequately exercised. Congress has addressed this issue on an ad hoc basis, year-by-year, by increasing the appropriations for ATSDR and otherwise encouraging complete implementation of the law's provisions. The amendments in S. 51 as reported should resolve this problem by creating a permanent earmarking of Funds which will be supplied directly to the Agency, and not pass through the Environmental Protection Agency or be reliant upon that Agency's budget process.

In general, protection of human health is the highest and ultimate goal of the Nation's environmental laws. Health effects data and information underlie all response actions taken under Superfund, as well as most action taken under other environmental laws. To truly protect human health and the environment requires that high priority be placed on the development of reliable data on the health effects of exposures to hazardous substances and other toxic chemicals. Only with such information can informed and rational judgments be made as to what actions must be taken to protect human health. Without information as to what substances are toxic, at what concentrations and under what conditions, it is not possible to determine with confidence which sites should be given highest priority in the cleanup and response process.

Conducting health assessments and studies of populations exposed to releases of hazardous substances from sites and facilities will not only enhance response to immediate health concerns, but will also build a comprehensive body of data that will define the threat that toxic chemicals pose to human health. In the long-term, greater knowledge of the human health effects of exposure to toxic substances will improve the prevention and control strategies required to protect and improve the health of the citizens of this country.

New paragraph (2) of section 104(i) requires the Agency for Toxic Substances and Disease Registry (ATSDR) to provide consultations on health issues relating to exposure to hazardous or toxic substances when so requested by the Environmental Protection Agency (EPA), State or local officials. Consultations to individuals may be provided by the States under cooperative agreements.

ATSDR will provide advice to the EPA, States, and local officials when available data indicate that the hazardous materials or toxic substances potentially have an adverse effect on the health of populations which may be exposed. This advice may include recommended exposure limits or assistance in identifying pathways of exposure so that EPA, the States, and local officials may prevent such exposure in order to protect the public health. The content of a health consultation may be communicated by a short telephone call from a knowledgeable health professional or it may require a more extensive consultation with a site visit, depending on circumstances and community needs. Generally, advice to individuals, as opposed to government entities, will be provided by officials within the States.

Paragraph (3) requires ATSDR to perform health assessments at all existing National Priority List (NPL) sites within two years of the date of enactment. Assessments shall be performed at all sites added to the NPL (after the date of enactment of the bill), within one year of their inclusion on the NPL. ATSDR shall also perform health assessments at RCRA subtitle C hazardous waste disposal facilities, as required under section 3019 of the Solid Waste Disposal Act, where there is sufficient data as to what hazardous substances are present in such facility, when so requested by EPA or a State.

Paragraph 3(B) also provides individuals the oportunity to petition, or make an informal or formal request, for a health assessment where it can be shown that individuals have been exposed to a hazardous substance, the probable source of which is a release under the act. The petition for a health assessment can be very brief and need only present such information on the identify and concentrations of toxic substances as is known to the petitioners and the nature of any health effects observed by or reported to the petitioners at the time of filing their petition. Further information on conditions at or near the site or on the identity and levels of toxic substances contributing to exposure may be obtained by the Administrator from the EPA, State agencies, or responsible parties. If lack of information is a factor in a decision not to perform a health assessment, the Administrator should inform the petitioners of his need for more information. Other reasons for not providing an assessment may be that no response is needed or that a consultation should be adequate. If a request has a low priority under the scheme in paragraph (3)(C) of this subsection, an assessment may be deferred but not necessarily denied unless extenuating circumstances exist. In the case of any petition, if ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

The results of consultations and health assessments performed under this section, whether by a State or by the Administrator of ATSDR, and any recommendations for further action shall be made available to the individual or organization requesting the consultation or assessment and shall be available to any other person requesting them, except to the extent that deletions from such results or recommendations are required by other law to protect personal privacy.

Each health assessment performed under this subsection shall include a finding as to whether the exposure assessed presents a potentially significant risk to human health, in order to permit the implementation of paragraph (5) of this subsection, and shall include a finding as to whether the exposure concerned creates a significant risk to human health, in order to permit the implementation of paragraph (7) of this subsection.

The Administrator should, through existing channels such as CDC's Morbidity and Mortality Weekly Report and through notice in the Federal Register, assure that physicians and State and local health officials are aware of the provisions for requesting consultations and health assessments from the Agency and from the States and of the nature of the information needed in requesting such services.

Paragraph (3)(C) directs the Administrator of ATSDR to establish a priority system for determining in what order, and for those not required by this paragraph, at which CERCLA and RCRA sites health assessments shall be conducted. Highest priority shall be given to those sites at which all three of the following criteria apply: First, there exists documented evidence of release of hazardous constituents into the environment; second, the potential risk to human health as a result of the documented risk appears highest, and; third, in the Administrator's judgment, existing health survey data gathered at the given site and other similar sites are inadequate to assess the potential risk to human health posed by the site. The existence of these criteria, however, is not intended to require ATSDR to first survey the entire universe of sites in order to establish a ranking before choosing to conduct health assessments or other studies at individual sites.

Paragraph (3)(D) requires that the results of any health assessments conducted by States or political subdivisions be reported to the Administrator of ATSDR, and include recommendations for any further health-related activities which should be undertaken at the site. On the basis of a health assessment, findings and recommendations should also be made as to whether any immediate actions should be taken to protect human health under paragraph (7) of this section. The Administrator of ATSDR is directed to include similar findings and recommendations in any health assessments carried out directly by ATSDR. In addition, ATSDR is expected to issue periodic reports on the results of all health assessments conducted under this authority. One possible source of publication for these reports is the Morbidity and Mortality Weekly Report, published by the Centers for Disease Control.

Paragraph (3)(E) of the section defines "health assessments" and makes implicit reference to a standard four-step approach to site-specific health studies developed by the ATSDR. As described by Dr. James O. Mason, Administrator, ATSDR, before the Senate Environment and Public Works Committee on May 24, 1984, the first step is to assess the potential health hazard posed by a site on the basis of results of environmental sampling.

"Health assessments" are defined in the amendment to include a broad, overall examination of the release, site or facility and to assess its potential risk to the health of the nearby population. Health assessments should include:

> First, a determination of the nature and extent of the release (e.g., the hazardous constituents and the amounts and concentrations in which they have been released).
>
> Second, information on existing or potential pathways of human exposure to the release, including contaminated ground or surface water, air emissions, and contamination of the food chain.
>
> Third, the size and potential susceptibility of the community within the existing or potential pathways of human exposure (e.g., the number of people, their ages and fitness, etc.).
>
> Fourth, a comparison of observed (measured) or expected human exposure levels at the site with known short-term and long-term (acute and chronic) health effects associated with the identified hazardous substances and any available recommended exposure or tolerance limits for such contaminants.
>
> Fifth, an analysis of available existing morbidity and mortality data for the population under study on diseases that may be associated with the observed levels of exposure, including comparison of observed versus expected morbidity and mortality rates where appropriate.
>
> And sixth, an evaluation of the risks to the potentially affected population from all sources of the hazardous substance, including known point or no point sources other than the site or facility in question.

ATSDR estimates the average cost of a health assessment to be $4,000 per site. Under paragraph (3)(G), the costs of any health assessments or further health studies conducted at CERCLA or RCRA sites under this authority may be recovered under the provisions of section 107 of CERCLA from the owner or operator of such site or others physically contributing to the release. If sources other than the RCRA or CERCLA site under study also contributed to the release, they would have to bear their share of liability.

Paragraph (4) provides that if, on the basis of a health assessment, potential for a serious health hazard is found, and if, in the judgement of the Administrator it is appropriate, a pilot epidemiologic study—cross-sectional or retrospective—of a group of people identified as the most highly exposed is undertaken. Control groups may also be included in the pilot study protocol. If the pilot study appears to validate the presence of excess morbidity or mortality, and if the Administrator of ATSDR believes it would be appropriate, the third step is to conduct a health study or full-scale epidemiologic study—including medical evaluations where indicated—of the entire affected population.

In determining whether to conduct a full-scale health study at a site, the Administrator should consider whether such a study would be scientifically feasible and also, whether such a study would be useful to determine further, beyond what is known from health assessments, the nature and extent of potential health effects at the site. Another important consideration is whether scientifically valid studies have already been conducted in other situations or at other sites with similar conditions and exposures.

The average cost of a pilot is estimated by ATSDR at $30,000. Full-scale epidemiologic studies typically take more than six months to perform and cost in excess of $100,000.

Paragraph (5) provides that the Administrator shall consider whether the establishment of a registry of exposed persons at each site for which a health assessment has been completed is scientifically feasible and would contribute to the purpose of this subsection. Important considerations include the usefulness of such a registry, the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

The issue of registries is one of the most difficult issues to address because of their costs, the mobility of the population, and the long-term commitment of resources to maintain the registries for 10, 20, 30 or more years. Exposure registries appear to be most valuable when persistent measurable levels of hazardous agents in which animal studies or other evidence predict significant toxic effects in humans or for hazardous agents for which current methods exist to prevent an adverse outcome.

Because of the potential migration of the population, if sufficient evidence exists that it may be necessary to establish a registry in the future, it may be cost effective and reasonable for the Administrator of ATSDR to obtain identifying and locator information on the people currently exposed so that in the event a registry is determined to be useful, the Administrator of ATSDR will be able to locate and identify those individuals to place them on the registry. This initial list of exposed persons may include nothing more than a list of the exposed persons by name, address, date of birth, and some identifier, such as license number. Such a list would form the basis for the late establishment of a formal registry, if the Administrator determines that such a registry would be appropriate.

Under paragraph (6), the Administrator of STSDR is required to conduct a study and report to Congress within 2 years on the usefulness, cost, and potential implications of medical surveillance programs as part of the health studies authorized under this section. Medical surveillance programs are periodic screening programs to identify diseases in exposed populations with periodic medical testing and provide a mechanism of referring for treatment those who are diagnosed as having such disease.

Paragraph (7) provides that if a health assessment or other study conducted under paragraphs (3) or (4) contains a finding that the exposure presents a significant risk to human health, the President is required to take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the risk to human health. This authority includes, but is not limited to, providing alternative water supplies, and permanent or temporary relocation of individuals. Most often, such decisions will be taken in response to acute risks and hazards, which are most likely to be detected by a health assessment or pilot epidemiologic study. As provided in this bill, the provision of alternative water supplies includes, but is not limited to, drinking water and household water supplies.

Paragraph (8) clarifies that none of the health-related activities authorized in this section is to be construed to delay or otherwise affect or impair the ability of the Administrator of the EPA to exercise any authority under sections 104 or 106 of the Act or under section 7003 of the Solid Waste Disposal Act. This paragraph is necessary in order to assure that the public, EPA, ATSDR, or the President, does not use the health-related authorities as a means of impeding or delaying necessary clean-up activities at a site. In addition, this paragraph is meant to clarify that the internal peer review process for all studies conducted under this section, under paragraph (10), shall not preclude or prevent the EPA from taking emergency or other actions at a site if preliminary results of a study suggest that serious health hazards exist and must be mitigated, but before the full study can be released to the public.

Under paragraph (9)(A) of this subsection, the Administrator of ATSDR is required to prepare lists of the harardous substances which present the most significant potential threat to human health either due to their common presence at sites or due to the potential toxicity of the compound. Within 6 months of the date of enactment a list of 100 such compounds will be prepared; within 24 months of enactment an additional 100 will be added. Further substances will be added as frequently as they are identified. Paragraph (9)(C) requires the Administrator to look at what is known about the toxic material that is placed on the list and, if sufficient information is not available, to assure that a research program is begun to provide that information. Paragraph (9)(B) provides authority for research on methods to perform toxicologic testing for two or more compounds which exist together (i.e. mixtures, mixed disposal). These methods are not now generally available.

The Committee is concerned about the enormous toxicity data gap associated with industrial chemicals. A recent National Academy of Sciences Study of the adequacy of health effects data on chemicals found that about 80 percent have no toxicity data at all. The Environmental Protection Agency has testified that there is not enough health effects data on common organic chemical contaminants of drinking water to set standards for these contaminants. Many of these contaminants are asociated with Superfund sites. The general dearth of health effects data on these chemicals is hindering the Agency's efforts to grapple with priority setting and cleanup standards in the Superfund program.

Paragraph (9)(B) also provides detailed guidance on the types of laboratory tests may be required. Not all of these tests need to be done for each substance, but a phased approach to identify the hazards for each substance is necessary. Some substance will require very extensive work; others less work, or perhaps none at all. The Administrator should also undertake research on methods for detecting low-level exposure or markers of preclinical effects related to exposure to toxic substances and for evaluating sensitive indicators of exposure to such substances.

Paragraph (9)(D) provides that the research undertaken for these materials be coordinated with toxicologic testing and research that is conducted by the National Toxicology Program and the Environmental Protection Agency under the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act. Some testing of chemical substances that may be listed by the Administrator is underway pursuant to the authorities of these statutes. These statutes provide authorities whereby the Environmental Protection Agency can require manufacturers and processors of chemical substances to perform the necessary health effects testing. The Administrator should also coordinate these efforts with those of the National Toxicology Program. The purpose of coordination is to avoid duplication of effort and to assure that listed substances are tested at the earliest practicable date. In coordinating research under this paragraph with toxicologic testing under other programs, the Administrator shall give due consideration to the differing goals and testing requirements of such other programs in determining the need for additional or different testing in order to meet the goals and requirements of CERCLA. The overriding consideration is to assure that tests are conducted expeditiously and, if recourse to other authorities would result in more than mimimal delay, work should be undertaken pursuant to the exposure Superfund authorities.

Paragraph (9)(E) expresses the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs to toxicologic testing under the Toxic Subtances Control Act. Where it is impractical to secure such funding from the manufacturer, the costs of the required research programs should be borne by the parties responsible for the release of the hazardous substances in question. The costs of conducting such a research program are deemed to be eligible under section 107 of the Act for the purposes of recovery from a party responsible for a release of such hazardous substance. In particular, costs of such research should be sought from generators of the substance, rather than from transporters or disposal firms.

After completing research and review of al available information for each substances included on the list, the Administrator is required to publish, revise, and republish the information as necessary, but not less than once every 5 years, so that it will be available to the States and other interested parties. These toxicologic profiles are required by paragraph (9)(F), and should contain a succinct summary of the health effects of the substances or mixture of substances, in a style accessible and understandable to public health professionals who lack substantial training in toxicology, and with references to major clinical and research studies for those who can make use of them. Such profiles shall be prepared for all the substances listed under paragarph (9)(A), regardless of whether additional research on such substances is required to be initiated. Profiles on mixtures of substances shall also be prepared as such information becomes available. All these toxicologic profiles should be made as accessible as possible to Federal, State and local officials, as well as to health professionals. One means by which to provide ready access would be to have the profiles included in the National Library of Medicine computer system.

Paragraph (10) requires that ATSDR establish a mechanism of internal peer review for all studies ([illegible] than health assessments) and results fo research conducted un[illegible]his subsection. It is the intent of the paragraph to require such internal peer review of any and all such studies or results of research prior to their release to the public. It is recognized that time may not always permit, and the Administrator of ATSDR may not always find it appropriate to conduct, peer reviews of each individual site health assessment. Whenever conducted, the peer review shall be performed by panels consisting of no fewer than three and no more than seven disinterested scientific experts, selected by the Administrator of ATSDR on the basis of their scientific objectivity and a lack of institutional ties with any person involved in the conduct of th estudy or research under review. The support staff for the review panels shall come from ATSDR. Peer reviewers shall remain anonymous until such time as their findings are made known. After completion of the peer review process, the STSDR will make the significance of the results known to the study participants (in the case of a health study). The background data, calculations, results, interpretations and conclusions of any and all studies and programs of research conducted under this authority shall be published as appropriate in peer reviewed scientific journals. In addition, summaries will be periodically published as supplements to the Morbidity and Mortality Weekly Report.

These peer review and reporting requirements are necessary in order to assure that sound and valid scientific work is performed and reported to the public, as well as to assure the objectivity and credibility of the ATSDR. In addition, the ATSDR is expected to publish periodic reports of the results of health assessments and other studies which it conducts or oversees in order to provide further information on the overall extent and nature of the potential threat to public health posed by hazardous waste sites.

Under paragraph (11), the Administrator of ATSDR is authorized to establish a program for the education of physicians and other health professionals in the methods of diagnosis and treatment of injury or diseases related to exposure to toxic substances. The Administrator is to report back to the Congress not late than two years after the date of enactment on the implementation of this paragraph.

It is the intent of this authority to encourage the transf[illegible] of medical information to practicing physicians and other health professionals who are providing care to individual patients. There are several methods that may be used here, such as conferences, meetings, symposia, home study courses, short training courses, etc. In addition, training centers could be set up around the country. The Administrator should review all options which are authorized under this authority, determine the most cost effective, implement the, and report to the Congress. It is desirable here that plans be devised to provide the the necessary information to the maximum number of practicing health professionals.

Under paragraph (12), to implement its authorities, the ATSDR must be provided with adequate personnel, but no fewer than 100 full-time equivalent employees [FTE's] it is the intent of this amendment to provide increased personnel for the ATSDR without forcing a concomitant reduction in FTE's in other components of the Department of Health and Human Services.

Paragraph 13 grants authority to the ATSDR to enter into cooperative agreements with States or political subdivisions thereof for the purpose of delegating any or all of the functions of the ATSDR under this section and providing funding for the delegated functions, which may include the conduct of health assessments of RCRA and CERCLA sites, and the provision of health consultations. This cooperative agreement authority is modeled after similar authority provided under section 104(d), except that it allows such cooperative agreements to cover any or all of, but not necessarily limited to, the following: health consultations and assessments, health and epidemiologic studies, health referral systems, data collection systems, disease registries, and establishment of ongoing environmental health risk assessment programs, Other activities may also be delegated through cooperative agreements at the discretion of the Administrator of ATSDR.

This paragraph also amends section 111(c)(4) to clarify that all the expenses of ATSDR are to be paid out of Superfund. A new section 111(n) is added, making available not less 5 percent of the annual appropriation out of the Fund (or $50,000,000, which is less) for each fiscal year, directly to the Agency for Toxic Substances and Disease Registry. Funds which the ATSDR has not obligated by the beginning of their fourth quarter of the fiscal year in which made available are to be returned to the Trust Fund. These provisions, however, shall not preclude the ATDSR from seeking and receiving additional funds from the Environmental Protection Agency under separate interagency agreements if the need for, and cost of, separate health studies exceeds ATSDR's budgeted capacity.

The reported bill amends section 3019 of the Solid Waste Disposal Act. That section requires that owners and operators of landfills and surface impoundments submit to the Agency—or authorized State—an assessment of the potential for the public to be exposed to hazardous substances released from these units. The assessment must address reasonably forseeable potential releases from both normal operations and accidents. The former includes the steady release of small quantities of volatile chemicals into the air, and the seepage of waste constituents through clay liners. The latter results from abnormal operating conditions and includes fires, explosions, and major liner failures, as well as transportation accidents.

Owners/operators are required to obtain reasonably ascertainable information of types of releases, the potential pathways of human exposure, the magnitude of the exposed population, and the nature and toxicity of the hazardous substances.

Owners/operators should already have access to most of the information required under this section. Regarding accident data, there are many reasons why such information should already have been compiled. Concern for worker safety, avoidance of plant shutdowns, and a desire to keep insurance premiums at a minimum all create an existing incentive for owners/operators to identify sources of potential accidents at their facilities and to take preventive measures to correct them. Thus, for example, it is a common practice for plant operators to identify existing hazards with the "standard checklist" method—see, for example, American Institute of Chemical Engineers, Fire and Explosion Guide, 1980. Where such assessments have been conducted, all that owners/operators need further do to comply with section 3019 is identify the potential pathways—for example air, surface water—for hazardous substances released during an accident, and the nature and magnitude of the release and the potentially exposed population.

Similarly, owners/operators should already have access to data on routine releases from their facilities. In order for insurance carriers to compute premiums for nonsudden liability coverage—as required under 40 CFR part 264—they often survey their client's facility to determine the risk of exposure of third parties to anticipated releases. Where insurance carriers provide this information to their clients, this should largely relieve owners/operators of the burden of developing the date required under section 3019.

This assessment must be submitted to the Agency—or an authorized State—either with the part B application or, for facilities for which a complete part B application has already been submitted, 9 months after enactment. However, submission of an adequate exposure assessment is not a condition for permit issuance; noncompliance with section 3019 is a separate violation of RCRA and should not be viewed as a vehicle to delay the permitting process. Furthermore, owners/operators should not postpone conducting the assessment in section 3019 in anticipation that EPA will subsequently promulgate regulations interpreting the statutory requirements.

The EPA shall make all information collected under section 3019 available to the ATSDR. If, in the opinion of the Administrator of the ATSDR, the Administrator of the EPA, or a State—in the case of a State with an authorized program—conditions exist which warrant a health assessment at a particular landfill or surface impoundment, such assessment, and any further necessary actions, shall be conducted by the ATSDR in accordance with the provisions of section 104(i) of CERCLA. A health assessment at a RCRA landfill or surface impoundment would be appropriate if the facility posed a substantial potential risk to human health for any one of a variety of reasons: the existence of actual releases of hazardous constituents; magnitude of contamination with hazardous constituents which may be the result of a release, or; the magnitude of the population exposed to such release or contamination.

As reported, the bill also makes two technical amendments to existing statute. First, the bill clarifies that the ATSDR shall report directly to the Secretary of Health and Human Services, not to the Surgeon General. Second, the bill replaces the term "chromosomal testing" in current section 104(i)(4), with the phrase "appropriate testing."

PUBLIC PARTICIPATION

SUMMARY

The reported bill adds a new subsection to section 104 which requires an opportunity for public comment before the Federal government or any State (operating under a cooperative agreement) selects a particular remedial action at any site or enters into any settlement agreement or otherwise disposes of any claim against any party under the act, including entry of an order against such party. Notice to the public must be accompanied by a reasonable explanation of the proposed remedial action and major alternatives considered.

DISCUSSION

The support of communities affected by Superfund sites is important to the success of any cleanup plan. Affected communities will demonstrate stronger support for cleanup actions if they are involved from the outset in developing and selecting the actions necessary at the sites.

Therefore, this section of the bill requires the Environmental Protection Agency, working with the Department of Justice, to develop procedures for assuring that the public will be made aware of proposed remedies (including those to be implemented by the EPA, by States, and by private parties), as well as affording them the opportunity to comment upon that remedy or offer alternatives for consideration by the EPA or States prior to the final selection and implementation of the remedy.

In the case of a Fund-financed remedy undertaken by EPA or a State (acting through a cooperative agreement), this will mean publicizing and taking comment on the results of the Remedial Investigation and Feasibility Study before final selection of a remedial action. In the case of a remedy undertaken by responsible parties resulting from an enforcement action, this will mean publicizing and taking comment on the proposed remedy secured through negotiations with those parties before a consent order, decree or agreement becomes final.

In all cases, effective notice must first be given to the interested public. The notice must be accompanied by a discussion and analysis which provides a reasonable explanation to the interested public of the proposed remedial action and alternative proposals under consideration. The Federal government or State must then provide an opportunity for a public meeting in the affected area and a reasonable opportunity to comment on the proposed remedial action and alternatives. A comment period of 30 days would be proper in most instances.

When the remedial action is selected, the Administrator should make public the plan for the selected action, review comments received on the proposed plan and alternatives, and make any appro-

priate changes to the plan. A brief explanation to the community of why changes were made, or not made, may also be helpful.

If the remedial action proceeds in two or more distinct phases and separate studies and alternatives are developed at different times for different phases, the process of notice and opportunity for comment shall apply to each phase.

If the public is to make maximum use of a relatively brief comment period on the remedial plan, it must be well informed before that period begins. To this end, the Administrator should make data, studies, reports, and other information on the contents or conditions of the site and its likely effects on health and the environment, and any preliminary information on possible remedial actions and feasibility studies, promptly available at a central location near the site and accessible to interested members of the public. However, this must not become unreasonably burdensome for the Administrator, and the Administrator need not send every single datum or communication on the site to the central location.

The Environmental Protection Agency advised the Committee that this amendment is consistent with current Agency policies concerning community participation.

This provision should not impose excessive burdens on EPA. Reasonable time limits on the notice and comment period should assure that the final selection and implementation of the remedy is not unduly delayed. While this will require some additional time, adding some steps to the selection of any cleanup plan to provide public participation will engender public confidence and ultimately save both time and resources.

LOVE CANAL PROPERTY ACQUISITION AMENDMENT

SUMMARY

The reported bill adds a new subsection to section 104, which directs the Administrator of the Environmental Protection Agency to place a high priority on the purchase of the remaining properties in the Love Canal emergency declaration area in Niagara Falls, New York.

DISCUSSION

Under a 1980 agreement between the Federal Emergency Management Agency (FEMA) and the State of New York, funds are available to purchase all the owner-occupied homes in the Love Canal emergency declaration area. Non-owner-occupied homes, commercial properties, community facilities, and vacant properties are not eligible for purchase under the FEMA-State agreement.

This section specifies that the Administrator use monies available under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to purchase the remaining properties. The estimated cost of the properties involved is $4 million.

ADMINISTRATIVE ORDERS FOR SECTION 104(b) ACTIONS

SUMMARY

This section authorizes the President to issue administrative orders on consent to potentially responsible parties for conduct of a Remedial Investigation/Feasibility Study (RI/FS). Enabling the President to issue these orders will increase the prospect that responsible parties will agree to conduct RI/FS' and cleanups consistent with the requirements of CERCLA.

DISCUSSION

In many circumstances it may be appropriate for responsible parties to conduct the remedial investigations and feasibility studies (RI/FS') which guide the President's remedial decisions. Private parties are more likely to assume responsibility for conduct of cleanup action if they have had opportunities for involvement in the decision concerning the appropriate remedy. Private-party RI/FS' are a valuable part of the CERCLA cleanup program when they are technically sound and conducted in a timely fashion, the alternatives are consistent with the requirements of CERCLA, and their development is subject to adequate oversight by the government.

The government's oversight can be most effectively conducted when the responsible parties conducting the RI/FS are subject to an administrative order. CERCLA currently authorizes the President to issue administrative orders under section 106. However, the start of an RI/FS under section 106 may be delayed while the government and responsible parties debate the existence of an "imminent and substantial endangerment," as specified in section 106.

Therefore, in appropriate circumstances, it will be useful for the President to issue orders on consent for private party RI/FS' which are not based upon the criteria of section 106. These section 104(b) orders will increase the likelihood that potentially responsible parties will conduct RI/FS' and ultimately consent to undertake cleanup, thus making available Fund resources for additional sites.

Settlements for the design and construction of the remedy would continue to be ratified by section 106 orders or consent decrees.

NATIONAL CONTINGENCY PLAN—HAZARD RANKING SYSTEM

SUMMARY

The reported bill adds two new subsections to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act. New section 105(b) requires the President to revise the National Hazardous Substance Plan not later than twelve months after the date of enactment of these amendments to provide procedures and standards for remedial actions undertaken pursuant to CERCLA which are consistent with the amendments made by this Act.

New section 105(c) requires the President by rule, not later than twelve months after the date of enactment of these amendments, to promulgate amendments to the hazard reanking system in effect on September 1, 1984. These amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. These amendments shall take effect as of the date established by the President, not later than eighteen months after the enactment of the Superfund Amendments of 1984. The amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date of the amendments. The hazard ranking system in effect on September 1, 1984, shall continue in full force and effect until the new regulations are in effect.

DISCUSSION

The President is directed to update the National Contingency Plan originally published for section 311 of the Clean Water Act so that the plan reflects the responsibilities and powers created by S. 51. The original CERCLA legislation required the revisions of the National Contingency Plan to add a new section giving some consistency and cohesiveness to response planning and actions for hazardous substance response actions. The Plan includes among other items:

(1) appropriate roles and responsibilities for Federal, State and local authorities and non-governmental entities;

(2) methods for discovering and investigating sites of disposed hazardous substances and in-place concentrations of such substances;

(3) methods and criteria for determining the appropriate extent of response measures;

(4) methods for evaluating remedial actions; and

(5) provision for obtaining prepositioning and maintaining necessary response capabilities.

After the revised plan reflecting the current amendments is published, removal and remedial actions should be in accordance with the Plan to the greatest extent possible.

The present hazard ranking system based on the so-called Mitre Model has been criticized for failing to assess accurately the relative degree of hazard posed by various sites and facilities. The purpose of the hazard ranking system is to indicate degree of hazard or risk in order to determine whether a site or facility should be placed on the National Priority List. In particular, the validity of the present hazard ranking system has been questioned for identifying the degree of hazard or risk posed by mining sites. The hazard ranking system appeared to identify the most hazardous constituent a site, quantify the total amount of wastes at the site, then assume that all of the waste is comprised of the most hazardous constituent. This could introduce a bias in the hazard ranking system against large quantities of waste with the presence of trace toxic metals, such as typical mining wastes.

In order to determine whether such a bias exists and establish a system which accurately assesses the relative hazard in candidates for remedial action, the bill requires the hazard ranking system to be revised through a rule-making proceeding.

The provision is meant to deal with this problem without interfering with continued EPA progress toward assessing potential site hazards, listing sites, or beginning clean-up action. It would not affect any site or facility listed prior to the actual effective date of the new hazard ranking system, nor would it require the ranking or listing of any site or facility to be delayed. But by assuring greater accuracy in the hazard ranking system, highest priority attention would be focused on the sites posing genuinely the greatest danger.

The amendment meets this objective by (1) setting up a review and public comment procedure and requiring promulgation of revisions in one year; (2) assuring that the new system will go into effect by a date established by the President, to be not later than 18 months after enactment; (3) establishing a substantive standard for the hazard ranking system that to the maximum extent feasible is an accurate assessment of the relative degree of risk to human health and the environment of the sites to be reviewed; and (4) leaving the present hazard ranking system in operation until the more accurate hazard ranking system can be put into effect for sites to be listed thereafter.

NATIONAL CONTINGENCY PLAN

SUMMARY

The reported bill amends section 105(a)(8)(B) (as designated by this Act) to eliminate the requirement that the National Contingency Plan include at least 400 facilities and clarify that States are allowed only one highest priority designation for the life of the list.

DISCUSSION

Under current law, the National Priorities List must contain at least 400 top priority facilities. Deletion of this phrase will allow the EPA to select and place on the NPL only those facilities which present "the greatest danger to public health, welfare, or the environment," based on the criteria of section 105 of the Act.

The second part of the amendment would be a ratification of EPA's present policy of permitting States to make only one highest priority designation. This policy is reflected in the most recent proposed revisions to the NCP.

If a State's highest priority facility is cleaned up and deleted from the NPL, the State will not get another highest priority designation. Allowing another priority designation would provide the States with an opportunity to circumvent the hazard ranking system developed under the NCP.

FOREIGN VESSELS

SUMMARY

The reported bill deletes from section 107(a)(1) of CERCLA a clause which excluded from liability under CERCLA all foreign vessels not otherwise under United States jurisdiction.

DISCUSSION

This amendment clarifies that foreign vessels which release hazardous substances in areas subject to United States jurisdiction are subject to liability under section 107 of CERCLA even where the foreign vessel itself is not subject to United States jurisdiction under any other law.

STATE AND LOCAL GOVERNMENT LIABILITY

SUMMARY

The reported bill amends section 107(d) to modify the potential liability of State and local governments that respond to emergencies created by the release of a hazardous substance, pollutant or contaminant generated by or from a facility owned by another person. State or local governments shall not be liable for costs and damages as a result of non-negligent actions taken in response to such emergencies.

DISCUSSION

Under current law, there may be disincentive for State and local governments to respond to emergencies covered by CERCLA because the same liability standards may be applied to these entities as is applied to private parties who are responsible for a spill or other release of a hazardous substance, pollutant or contaminant.

Under this amendment, when a State or local government takes an emergency action to abate a hazard on a non-negligent way, that government will not be subject to the liability provisions applicable to the parties that created the hazard.

CONTRACTOR INDEMNIFICATION

SUMMARY

This section amends section 107(e) of the Act to authorize the Administrator to provide indemnification to contractors who are engaged by the Agency or the States to respond to the release of hazardous substances, against potential liability that might arise as a result of their actions.

DISCUSSION

The potential for being held jointly and severally liable for injury or property damage under existing law may discourage competent contractors who would otherwise offer their services and expertise to respond to releases at specific sites.

Indemnification under this provision may cover claims for death, bodily injury and property damage, and may include the expenses of litigation that would arise as a result of the contractor's conducting activities under contract with the Agency or the States. Indemnification cannot extend to contractors where the injury or damage was caused by a negligent action of the contractor.

The decision to extend such indemnification is descretionary with the Administrator. Indemnification does not arise without a specific contractual arrangement that extends such protection.

NATURAL RESOURCE DAMAGE CLAIMS

SUMMARY

The reported bill clarifies and relocates from section 111(h) to section 107(f) existing language regarding the relative responsibilities of Federal and State natural resources trustees. In addition, the provision requires the promulgation of damage assessment regulations under section 301(c) of the Act not later than six months after enactment of this Act. The bill also amends section 111(e)(2) to provide that no money in the Fund/may be used to pay claims for natural resource damages in any fiscal year for which the Predident determines that all of the Fund is needed for responses to threats to public health.

DISCUSSION

Generally, the Federal or State trustee would perform assessments of damage to resources under its own jurisdiction. Federal trustees may perform assessments on behalf of States if they are rimbursed by States for performing the assessments. Assessments by Federal or State trustees using the damage assessment regulations being prepared by the Department of the Interior would continue to be entitled to a presumption of validity. While the amendment to section 111(e)(2) makes it possible that in any given year during this reauthorization period, no Fund moneys may be available to pay natural resource damage claims, responsible party liability for such damages under sections 106 and 107 continues, and claims against the Fund are delayed, not extinguished. This provision does not preclude either response or payment of response claims where the damage to natural resources constitutes a threat to public health (e.g. as in the contamination of drinking water aquifers).

CONTRIBUTION AND PARTIES TO LITIGATION

SUMMARY

The reported bill clarifies and confirms existing law governing liability of potentially responsible parties by adding a new subsection 107(e) providing:

—that parties found liable under sections 106 or 107 have a right of contribution, allowing them to sue other liable or potentially liable parties to recover a portion of the costs paid; and

—that parties who reach a judicially approved good faith settlement with the government are not liable for the contribution claims of other liable parties.

The amendment also provides that, where a civil or administrative action is underway, any related contribution or indemnification actions by defendants or third-party defendants may be brought only after a judgment has been entered or a settlement in good faith has been reached in the initial civil or administrative action.

DISCUSSION

It has been held that, when joint and several liability is imposed under section 106 or 107 of the Act, a concomitant right of contribution exists under CERCLA. *United States* v. *Ward,* 8 Chem. & Rad. Waste Litig. Rep. 484, 487–88 (D. N.C. May 14, 1984). Other courts have recognized that a right to contribution exists without squarely addressing the issue. See, e.g., *United States* v. *South Carolina Recycling and Disposal, Inc.,* 7 Chem. & Rad. Waste Litig. Rep. 674, 677 (D. S.C. February 23, 1984). This amendment clarifies and confirms the right of a person held jointly and severally liable under CERCLA to seek contribution from other potentially liable parties, when the person believes that it has assumed a share of the cleanup or cost that may be greater than its equitable share under the circumstances. In cases where the United States has been required to pay response costs as a generator or facility owner or operator, the United States may also seek such costs from other responsible parties.

The amendment should encourage private party settlements and cleanups. Parties who settle, or who pay judgments as a result of litigation, may attempt to recover some portion of their expenses and obligations in subsequent contribution litigation from parties who were not sued in the enforcement action or who were not parties to the settlement. Private parties may be more willing to assume the financial responsibility for cleanup if they are assured that they can seek contribution from others.

In addition to encouraging settlement, the amendment will help bring an increased measure of finality to settlements. Responsible parties who have entered into a judicially approved good faith settlement under the Act will be protected from paying any additional response costs to other responsible parties in a contribution action.

The amendment will also promote more expeditious management of litigation. Response sites often involve dozens or even hundreds of potentially responsible parties with differing types and degrees of involvement with the release. While the government may sue all potentially responsible parties, it need not sue all these parties. It may instead sue a limited number of parties to secure complete cleanup or all costs of cleanup under the principle of joint and several liability. Generally, the government seeks to obtain complete cleanup or to recover all of its costs. In some instances, where the government has sued major contributors of hazardous substances to a site but not lesser contributors, the parties named by the United States have in turn sued other potentially responsible parties in the same judicial action. In several cases this has resulted in massive and potentially unmanageable litigation.

The amendment provides that if an action under section 106 or section 107 of the Act is underway, any related claims for contribution or indemnification may not be brought until a judgment or settlement is reached in such action. This provision is intended to postpone counterclaims, cross-claims, and third-party actions; parties with counterclaims deemed compulsory under the Federal Rules of Civil Procedure shall pursue such claims after completion of the case-in-chief. This postponement allows the government to limit the number of parties and claims in its actions, so that litigation may be resolved in a more efficient and expenditious fashion. This provision is not intended to have any retroactive effect on third-party actions that were filed prior to the enactment of this amendment. District courts should carefully manage cases filed prior to enactment in a way that avoids prejudicing the government's ability to resolve its cases expeditiously and without the significant delays and expenses that third-party litigation may create.

As with joint and several liability issues, contribution claims will be resolved pursuant to Federal common law. Courts are to resolve such claims on a case-by-case basis, taking into account relevant equitable considerations.

FEDERAL LIEN

SUMMARY

The reported bill amends section 107 to add a new subsection (m) to enable the United States to recover its response costs through an in rem action against the real property that is the subject of the response action. Such protection for the United States will also enable it to recover the increase in land value resulting from the response action, thus preventing unjust enrichment of the property owner.

DISCUSSION

The amendment provides that all costs and damages for which a person is liable to the United States under section 107(a) of the Act shall be a lien on all real property affected by the response action. The lien arises at the time the United States first incurs response costs, but is not perfected as against purchasers, security interest holders, and judgment lien creditors (all as defined in the tax lien statute, 26 U.S.C. section 6321 et seq.) until notice of the lien is recorded or filed. The notice provision does not apply with respect to any person who knows or should have known that the United States has incurred response costs.

The federal lien does not have any special priority over the perfected security interests of other creditors. Instead, it has priority over other secured creditors only as of the date they have constructive or actual notice of the creation of the lien. Nonetheless, the lien provides protection to the United States in instances where the owner of the land on which a response action has occurred becomes insolvent or cannot be found. The federal government retains the right to proceed in personam against all persons liable for response costs and damages under section 107(a).

The creation of this lien does not itself in any way make the United States a liable party under CERCLA or any other laws, nor does it affect any rights the United States may enjoy under other Federal or State laws.

46

Direct Action

SUMMARY

This amendment clarifies certain aspects of existing financial responsibility requirements and provides for direct action against guarantors in appropriate cases.

Specifically, the amendment: (1) provides claimants in appropriate circumstances with the right of direct action against guarantors (defined as persons who provide evidence of financial responsibility to an owner or operator, (2) permits a guarantor when subject to a direct action suit to invoke as a defense the terms and conditions contained in the guarantor's policy of insurance with the owner or operator, (3) confirms, without diminishing any other statutory, contractual or common law liability of a guarantor, that the total liability of a guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to a particular owner or operator, and (4) authorizes the Administrator to establish appropriate rules and defenses with respect to such actions.

DISCUSSION

The amendment modifies an existing right of direct action against a guarantor. With direct action, a claimant may file a lawsuit naming an insurance company or other entity serving as guarantor as a defendant in the case. Absent the right of direct action, an insured party would file an action only against the person who allegedly had caused the injury, and it is that person's liability which is litigated in the action. The insurer's initial obligation is to its insured, with whom the insurer has a contract. If the insured is found liable, then the insurer is obligated to make payment to the insured in accordance with and subject to the terms of the contract.

In some instances, however, an injured party, who is the intended beneficiary of the financial responsibility requirements in CERCLA, may not be able to bring an action against the owner or operator to recover from that owner or operator or their guarantor. There are two specific circumstances where this may occur. First, it is possible that a claimant may not be able to obtain court jurisdiction over the owner or operator. Second, and perhaps more likely, the owner or operator either voluntarily or involuntarily may be a debtor in bankruptcy. These two circumstances include cases where an owner or operator may be identified and subject to court jurisdiction, but clearly unlikely to be solvent (i.e., capable of paying the judgment) at the time the litigation is resolved. The amendment would afford a claimant the right of direct action in both instances.

Policy terms and conditions

In a direct action lawsuit, the amendment permits the guarantor to invoke not only the defenses that would have been available to the owner or operator, i.e., acts of God, acts of war, unrelated third party acts in limited circumstances, but also the terms and conditions that the insurer had agreed upon with the insured in their policy of insurance. By authorizing a guarantor to invoke these rights and defenses, this amendment should foster the development of a competitive marketplace for insurance certified as evidence of financial responsibility. A competitive marketplace should lead to the greater availability of reasonably priced insurance certified as evidence of financial responsibility. This, in turn should encourage increased compliance with CERCLA's financial responsibility provisions (and the availability of direct action) which will ultimately benefit the claimants by providing them with greater financial protection.

In addition, a major goal of the financial responsibility requirements is to enlist insurers to provide additional policing and incentives to monitor the behavior of their insureds. The preservation of an insurer's policy terms and conditions vis-a-vis its insured may assist in meeting this objective. It is often policy terms and conditions, as well as inspection and rate-making, that form the basis of the insurer's ability to influence the insured to act carefully and responsibly.

At the time of enactment of CERCLA, there was some concern that a guarantor might use its policy terms and conditions to diminish the risk it was undertaking, and therefore the value of the financial responsibility it had provided. We hope the cause for this concern will be minimized by several factors. One factor is the intensely competitive nature of the property-casualty insurance market. Owners and operators should have little incentive to purchase insurance certified as evidence of financial responsibility that does not provide meaningful coverage when insurance that would provide valid protection for their assets is readily available. Moreover, insurance companies are subject to comprehensive regulation at the State level so that, if this problem ever did arise, there would be an available procedure to correct it promptly. Nevertheless, as a further safeguard the amendment authorizes the Environmental Protection Agency to specify policy or other contractual terms, conditions or defenses which EPA deems to be necessary or to be unacceptable in establishing evidence of financial responsibility.

Liability limits

The amendment also clarifies and defines more precisely the ultimate liability of a guarantor when providing evidence of financial responsibility. As written, present section 108(d) of CERCLA could be interpreted so as to expose an insurer to the full amount of the risk regardless of the insurer's policy limits should an insurer be found to have acted not in good faith. Section 108(d) does not define the term "good faith" nor does it specify to whom the guarantor must act in good faith. To cure this uncertainty, the amendment specifies that a guarantor's policy limits shall be binding, but that nothing in CERCLA is intended to limit any other statutory, contractual or common law liability of a guarantor, including an insurer's traditional common law obligation to act in good faith toward its insured. Moreover, the amendment also makes explicit that the liability limit of a guarantor in any specific instance is to be determined by the aggregate amount which the guarantor has provided as evidence of financial responsibility to the particular owner or operator involved in the matter.

While a guarantor's liability under CERCLA is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under CERCLA, this section does not limit the guarantor's liability to the amount for which financial responsibility must be demonstrated. For example, if the owner or operator secured a guaranty for an amount greater than the amount required pursuant to section 108, the guarantor's liability is limited by the amount of the guaranty, not the amount required pursuant to section 108.

Evidence of financial responsibility

Finally, the amendment makes explicit and uniform how evidence of financial responsibility is to be provided. First, the amendment requires that evidence of financial responsibility is to be provided in accordance with regulations promulgated by the Administrator of EPA. Thus, for example, the mere purchase of insurance by an owner or operator is not sufficient, in and of itself, to meet the financial responsibility provisions of CERCLA. Rather, in order to meet the statutes' requirements, an owner or operator must obtain from a guarantor insurance or some other form of financial guarantee that qualifies as evidence of financial responsibility pursuant to the EPA's regulations. Second, the amendment provides that evidence of financial responsibility may be provided by any one, or any combination, of the following: insurance, letter of credit, guarantee, surety bond or qualification as self-insurer.

VICTIM ASSISTANCE DEMONSTRATION PROGRAM

SUMMARY

S. 51, as reported, establishes a five-year demonstration program of assistance to victims of exposure to hazardous substances released into the environment, to be operated in five to ten areas of the country.

The bill adds the cost of grants under this program to the list of permissible uses of the Fund, and specifies that only the general Revenue/contribution to the Fund is available for this purpose.

This provision adds a new subsection (m) to section 111 of the law. Subsection (m)(1) sets out the eligibility criteria which must be met by an area in order to be nominated by a State to EPA for participation in the program. The prerequisites for eligibility are:

First, a health assessment or other health study required under section 104(i) of the Act must have been performed.

Second, the health assessment or other health study must contain certain information. Specifically, the study must indicate that:

1. There is a disease or injury for which the population of such area is placed at significantly increased risk as a result of a release of a hazardous substance;
2. Such disease or injury has been demonstrated by peer reviewed studies to be associated (using sound scientific and medical criteria) with exposure to a hazardous substance; and

3. The geographical area contains individuals within the population who have been exposed to a hazardous substance in a release.

Any area which in the judgment of a State meets these criteria may be nominated by the State in which it is located to the Environmental Protection Agency for selection.

Selection is to be made by the President or his delegee in its sole discretion. However, selections must be made taking into account the experience of the State and local governments in administering programs dealing with hazardous substances, as well as the representative nature of the hazardous substance releases and exposure in terms of the identities and toxic characteristics of the substances found, the manner and degree of exposure, and the seriousness and duration of the diseases or illnesses caused.

The President shall select no fewer than five and no more than ten areas for participation in this program, assuming that at least that number of applications is received. If no applications are received, no grants will be made. Grants must be made in different States, to the extent possible. Assuming that several States submit applications, the amendment directs the President to make grants to areas located in at least five different States. The amendment also specifies that each grant is to made for not less than $1 million per year and not more than $10 million per year.

No area or class of individuals may receive assistance from a program established under this subsection if there is a solvent responsible party who may be liable under section 107 and who is already providing medical assistance comparable to the assistance available under this program.

Paragraph (5) specifies the elements that must be included in any State program operated under this subsection. A participating State shall operate, for at least three years and not more than five years, a program which provides for the area selected the following assistance:

1. Medical screening examination and testing as necessary to determine the presence in individuals of the disease or injury for which the population of the geographic area is at significantly increased risk;
2. For persons with no present symptoms of such disease or injury, a secondary group medical benefits insurance policy for the costs of periodic medical screening to determine the presence of such symptoms;
3. For persons with present symptoms of such disease or injury, or who develop such symptoms, reimbursement of past out-of-pocket medical expenses for such disease or injury not already recovered, and a secondary group medical benefits insurance policy for the costs of treatment associated with such disease or injury.

The insurance benefits available under this assistance program are to be secondary to and nonduplicative of benefits available under other insurance policies running in favor of an individual, and to any benefits from public programs for which an individual is eligible. Initial eligibility for benefits under this program is to be determined as of thirty days prior to the date a State applies for participation in this program. If at a future date a person who was initially ineligible becomes eligible, secondary insurance assistance should be made available under this program. Persons initially eligible who at a future date become ineligible may receive insurance coverage only to the extent that it is nonduplicative of other benefits. Assistance under this program is provided on the condition that any payment received will be repaid to the Fund out of the proceeds of any award from or settlement with a responsible party.

The amendment requires the submission of several studies to evaluate this program. The President is required to submit annual reports to the Congress, beginning in January, 1987. Each State which participates in this demonstration program must submit to the President and the Congress a report on its program by January, 1990.

DISCUSSION

This amendment establishes on a demonstration basis a program of medical assistance to victims of exposure to hazardous substance releases into the environment. This approach is an attempt to develop information required to make a reasoned judgment on the extent of need for a broader victim compensation program and the workability of an administrative assistance program.

The subject of administrative compensation for the victims of hazardous substances and toxic chemicals is one which has been before the Congress since the mid-1970's, when the Clean Water Act was amended to provide a response program for environmental emergencies. The oil and chemical Superfund bill reported by the Committee on Environment and Public Works during the 94th Congress (which passed the Senate, but was not enacted), S. 2900, contained an administrative compensation program, as did the Superfund bill reported from this Committee in 1980. When the 1980 legislation was brought to the Senate floor, however, an agreement was reached which eliminated the victim assistance program and required a study of the adequacy of existing remedies to compensate persons injured by exposure to the release of toxic substances into the environment.

The study requirement is contained in section 301(e) of the current law. Pursuant to that section, three representatives of each of four major legal organizations were appointed to form what became known informally as "The 301(e) Study Group". The four organizations contributing members to the study group were the American Bar Association, The American Law Institute, the American Trial Lawyers Association, and the National Association of Attorneys General.

The Study Group submitted its report to the Congress on July 1, 1982. Having been charged with the responsibility of determining "the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances to the environment," the Group made ten recommendations. One of these was that a system of administrative compensation be established:

First Recommendation: Federal Administrative Compensation and State Judicial Remedies:

> In light of the limited availability and the inadequacy in many situations of existing remedies, and particularly in light of the inadequacy of the present tort system to deal with relatively small claims, the Study Group recommends a remedial program that is intended to provide means of recovery for victims of exposure to hazardous wastes, utilizing both administrative and judicial remedies, as may be appropriate.
>
> In broad outline, the Study Group recommends a two-tier system of remedies. The first tier, which is expected to be the part of the system most heavily relied on by persons injured by exposures, will provide an administrative compensation remedy without a showing of fault. The administrative compensation scheme would be established by federal legislation, but would be operated largely by the states pursuant to federal law. Its major purposes would include the provision of limited compensation to meet the economic and medical needs of persons injured in a manner which is more prompt and less costly than tort litigation. Such a compensation system would also provide a useful method of cost allocation and sharing, and a socially responsible method of internalizing the emerging costs of industrial and technological development.

The amendment contained in S. 51 does not fully implement the recommendation of the Study Group. Rather, it provides $30 million per year to selected States to implement the recommendation in specific areas which contain individuals who are at statistically significant increased risk of illness from exposure to hazardous substances. The amendment provides no economic compensation. Although the grants for such programs will be made available from the general revenue contribution to the Superfund, the actual establishment of the assistance programs will be by the States themselves.

Throughout the course of this debate competing assertions have been made that on the one hand, such assistance is not needed, and on the other hand that a program of victim assistance would overwhelm the resources of the Fund. The approval of a demonstration program reflects a recognition that this is an area of uncertainty, and more information is needed. The amendment focuses on geographic areas which could provide such information in two ways.

First, the amendment sets out specific area eligibility criteria. Only an area for which a health assessment or other health study has been performed pursuant to section 104(i) of CERCLA and which contains specified information, is eligible. A health assessment, to be performed at every site on the National Priorities List under section 1046i, is defined in that section as follows:

> The term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential sus-

> ceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

The Agency for Toxic Substances and Disease Registry is to specify in its health assessments the geographic area in which such exposures are occurring.

The requirements that area designation is to be based on information contained in a health assessment is to limit eligibility to those areas where populations have been placed at a statistically significant increased risk as a result of exposure to a hazardous substance released into the environment. There is a likelihood that areas around National Priorities List sites will be a focus of this program, due to the requirements that health assessments be conducted at each of these sites.

The amendment requires that the health assessment indicate that the population of a particular area is at significantly increased risk as a result of exposure to a hazardous substance release. The term "significantly" means statistical significance. It does not add a legal criterion for eligibility but rather clarifies the kind of risk assessment information that must be in a health assessment for purposes of area eligibility. Information with this degree of reliability is expected to be in a health assessment or other health study in any case.

The State in which such an area is located is to apply for participation in the program after its review of the health assessment or other health study performed under section 104(i) for compliance with the eligibility criteria set forth in subsection (m) (1).

Second, the selection criteria which are to guide the President's grant decisions will focus this program on geographic areas with real need and provide a useful body of information. Paragraph (2) directs the President to take into account the experience of State and local governments in administering toxic chemical regulatory programs. States with such experience as to be preferred, in part, because of their familiarity with the dangers of such substances to human health. The President is also directed to take into account the seriousness of the health threat posed by exposure to hazardous substances in an area, as well as the representative nature of the hazardous substances to which individuals are exposed. This will assure that the information developed will have broad applicability to situations which exist in other States, so that if necessary, solutions can be sought to address the most serious and most prevalent problems.

The amendment directs States to apply to the Environmental Protection Agency for participation in this program. This is a purely ministerial function. The authority to select participating States is vested in the President. The President should delegate this authority to a federal agency with experience in health-related activities. The Committee expects the Agency for Toxic Substances and Disease Registry to be consulted, at a minimum, about grant decisions.

However, selection of specific participating States is in the discretion of the President or the President's delegee. The approval or denial of a specific application is not subject to judicial review, except to the extent the President fails to select at least five such applicants, as required by section 111(m)(2).

Paragraph (5) describes the elements that must be included in any State program of assistance established under this subsection. Each State program will provide medical screening to all members of the population defined to be at increased risk of a disease or injury in the health assessment. The purpose of this analysis is to identify excess disease or injury associated with exposure to a hazardous substance already present in the population at risk, and to set in motion for those without present symptoms a process through which such a disease or injury can be detected at an early stage.

Two different forms of medical assistance are available under a State's program. For persons with no present symptoms, a secondary group medical benefits policy will provide for periodic medical screening. For persons who have symptoms of such a disease or injury, the State will provide a secondary group medical benefits policy to cover costs of treatment. Individuals in this category will also receive from the State program reimbursement for past medical costs associated with that illness, if not paid by any other source.

This general approach using an insurance mechanism was suggested in the Keystone Toxic Exposure Compensation Report of January, 1985. The group which participated in this project over many months last year represented interests from academia, industry, citizen and environmental organizations, labor, medical and legal professionals, and federal and state officials.

The Keystone group concluded "that an administrative system for hazardous substance exposure would best be directed at immediate welfare needs that are public health concerns. While there are other possible goals or objectives related to this issue, such as encouraging conduct to prevent such exposures, it was decided that the immediate public health needs of potentially affected individuals should be the principal objective in the system being sugget-ed".

With respect to the use of insurance to address long-term health needs, the Keystone group saw this approach as having some benefits for all parties, and recommended the implementation of such an administrative compensation system on a trial basis.

The reported bill will provide experience in this regard. Although the provision specifies the insurance benefits that must be provided by a State demonstration program of assistance, it does not require the use of any particular system of insurance. States will be free to establish a mechanism for providing the specified benefits which seems most appropriate given the geographic area selected, and the State's existing health care delivery systems. Such mechanisms could include group health organizations, administrative services only contracts, risk retention plans, or other arrangements to deliver care on a group basis.

FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES

SUMMARY

The reported bill amends section 111(e)(3) of the Act to provide that the fund can be used to pay for alternative water supplies in cases involving federally owned facilities, where groundwater contamination exists beyond the Federal property boundary and the federally owned facility is not the only potentially responsible party. This would include reimbursement of funds already spent by a municipality.

DISCUSSION

Current law prohibits the use of funds from Hazardous Substances Response Trust Fund for remedial action at sites where the potentially responsible parties include an agency or department of the Federal Government. Congress intended that costs at such sites should be born by the agencies responsible through appropriated funds, rather than from the trust fund derived from taxes on the chemical manufacturing industry.

This prohibition has caused considerable hardship at many sites across the Nation because Federal agencies have been slow to respond in cases where they are responsible. The Committee has been made aware of the problems at specific sites which have required immediate response with State and local resources to provide a alternative water supplies. In cases such as New Brighton, Minnesota, responses to protect the publc health have required the expenditure of several million dollars by a local government with no opportunity to recover these expenses from the responsible Federal agency in the foreseeable future.

The language of this section would make a limited modification in the current prohibiton. It would allow use of monies from the fund to respond at sites where the potentially responsible parties include an agency of the Federal government but also include other non-Federal parties. At such sites, the fund may be used to provide alternative water supplies and to reimburse municipalities to the extent that they have incurred costs to make available alternative water supplies.

STATUTE OF LIMITATIONS

SUMMARY

The reported bill strikes the current statute of limitations language in section 112(d) of the Act and adds a new subsection to section 133 setting out a revised statute of limitations. Under this new

provision, the statute of limitations is (a) for recovering the cost of response, 6 years after the date of completion of the response action; (b) for natural resource damages, 6 years after the date damage assessment regulations are promulgated under section 301(c) or 3 years after the discovery of the loss and its connection with the release, whichever is later; (c) for any other damages, 3 years after discovery of the loss and its connection with the release or 3 years after enactment, whichever is later, (d) for contribution actions, 3 years after entry of judgment or good-faith settlement; and (e) for subrogated rights under section 112, 3 years after payment of the claim.

DISCUSSION

CERCLA currently includes no explicit statute of limitations for the filing of cost recovery actions under section 107. There are differing interpretations concerning the time period within which cost recoveries must be filed. Consistent with its position under section 311 of the Clean Water Act, the United States has maintained that there is no statute of limitations in the law and that if one is applicable, it begins to run six years from the completion of site response.

This amendment establishes a six-year statute of limitations for the filing of cost recovery actions. The statutory language also specifies that cost recovery actions can be initiated upon the expenditure of Federal funds. The six-year period is the same as the period established by a clear line of cases for the parallel provisions in section 311 of the Clean Water Act. It will assure that no cost recovery actions will be precluded by any shorter time limit that responsible parties may raise, because of any potential ambiguities in the statute.

Nevertheless, there is a need to file cost recovery actions in a timely fashion, to assure that evidence concerning liability and response costs is fresh, to help replenish the Fund, and to provide some measure of finality to affected responsible parties. Because response actions may extend for a number of years, the government is not precluded from commencing an action for recovery of costs at any time after such costs have been incurred. When the government brings an action on an operable unit of response and that matter is resolved by judgment, the government is not precluded from bringing a subsequent action regarding a subsequent response.

For purposes of recovery of costs by the Federal Government under this section, the response action is regarded as completed upon completion of operation and maintenance activities funded by the Federal Government.

JUDICIAL REVIEW

SUMMARY

This section revises the provisions of section 113(a) governing the judicial review of regulations promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

New section 113(a)(1) provides that an application for review of a CERCLA regulation may be filed in the U.S. Circuit Court for the District of Columbia or in the U.S. Court of Appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation within one hundred and twenty days after such regulation is promulgated. Under current law, judicial review may only be had in the U.S. Circuit Court of Appeals for the District of Columbia, and applications for review must be filed within ninety days.

New section 113(a)(2) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which a regulation is to be reviewed when applications for review have been filed in two or more courts of appeals.

Following the selection of a single court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the Agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application for review has been filed would retain the power to transfer the case to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

DISCUSSION

The principal purpose of this amendment is to allow the filing of applications for review of CERCLA regulations in U.S. Courts of Appeals other than the U.S. Court of Appeals for the District of Columbia, which currently has exclusive jurisdiction over such applications.

The justification for centralized judicial review of environmental regulations is that it eliminates the possibility of conflicting interpretations of the law in different circuits and allows a single court to develop expertise in this complex area of the law. However, in the judgment of the Committee these advantages, to the extent they exist, are insufficient to offset the disadvantages of centralized judicial reivew, which include inconvenience to litigants who do not reside in Washington, D.C. and an unwarranted concentration of power in a single tribunal, which may in turn generate undersirable political pressures on the appointment of judges. Centralizing review in a single court may also deprive the law of diverse views on complex legal issues, and as a result may make the task of the Supreme Court more difficult.

Although other Circuit Courts of Appeal may not possess as much technical expertise as the D. C. Circuit, the responsibility of a Court of Appeals is to review regulations for conformity with law, not to undertake technical review of regulations and the Committee has no reason to believe that other Courts of Appeal lack competence to review regulations promulgated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The random selection process created by section 107(a)(2) is intended to avoid the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same Agency action. This process does not preclude any court of appeals from exercising its inherent power of transferring an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

The amendment also changes the period within which an application for review of any Agency action must be filed from ninety to one hundred and twenty days. In view of the seriousness of the possible consequences of a failure to challenge an action of the Administrator within the prescribed time period, persons who will be directly affected by a regulation should have ample opportunity to assess the consequences of such regulation and file an application for review. A period of one hundred and twenty days provides such an opportunity.

PREENFORCEMENT REVIEW

SUMMARY

The reported bill amends sections 113 and 106 to clarify the process for judicial review of government decisions on the appropriate extent of response and the liability of responsible parties. The amendments explicitly provide that:

—judicial review of all Presidential decisions concerning response is on the administrative record;

—there is no pre-enforcement review of section 106 administrative orders or section 104 response actions or orders; and,

—administrative orders may be subject to judicial review once response action is completed.

DISCUSSION

Record review

Although CERCLA does not explicitly state how decisions concerning response actions will be judicially reviewed, courts have suggested that review of decisions concerning the response, like other administrative decisions, is on the basis of the administrative record. This amendment clarifies and confirms that judicial review of a response action is limited to the administrative record and that the action shall be upheld (and all government response costs shall be awarded) unless the action was arbitrary and capricious or otherwise not in accordance with law.

Reliance on an administrative record helps assure that the basis for the response decision is clearly articulated and open to scrutiny by the public and responsible parties. Limiting judicial review of response actions to the administrative record also expedites the process of review, avoids the need for time-consuming and burdensome discovery, and assures that the reviewing court's attention is focused on the information and criteria used in selecting the response.

If major deficiencies are shown to exist in the administrative record that has been assembled, judicial review of the response in an enforcement or cost recovery action may be de novo, i.e., open to the introduction of evidence by all parties. Existing administrative law principles will govern whether supplementary materials explaining or clarifying the record may be introduced at trial; however, under most circumstances, judicial review should be limited to the administrative record itself.

Pre-enforcement review

Response actions or orders under section 104 and orders under section 106 may be subject to judicial review at the time the government seeks cost recovery or acts to enforce the order and collect penalties for noncompliance. This amendment clarifies and confirms that response actions and orders are not subject to judicial review prior to that time.

As several courts have noted, the scheme and purposes of CERCLA would be disrupted by affording judicial review of orders or response actions prior to commencement of a government enforcement or cost recovery action. See, e.g., *Lone Pine Steering Committee* v. *EPA,* 22 Env't Rep. Cas. (BNA) 1113 (D. N.J. January 21, 1985). These cases correctly interpret CERCLA with regard to the unavailability of pre-enforcement review. This amendment is to expressly recognize that pre-enforcement review would be a significant obstacle to the implementation of response actions and the use of administrative orders. Pre-enforcement review would lead to considerable delay in providing cleanups, would increase response costs, and would discourage settlements and voluntary cleanups.

Review of orders and reimbursement of costs

The changes relating to judicial review both clarify and confirm the existing process. The amendment also establishes new procedures for reimbursement of certain response costs and provides opportunities for judicial review of administrative orders once the response action required by the order is completed.

Under the reported bill, potentially responsible parties may request reimbursement from the Fund for costs incurred in responding to an order. If the President refuses to grant all or part of a petition for reimbursement, such parties may file an action in district court seeking reimbursement. Potentially responsible parties may obtain reimbursement, plus interest, if they can show that:

—they are not liable, and that the costs which they incurred in responding to the order were reasonable; or

—the response action ordered by the President was arbitrary and capricious or otherwise not in accordance with the law.

This provision will foster compliance with orders and promote expeditious cleanup, by allowing potentially responsible parties who agree to undertake cleanup to preserve their arguments concerning liability and the appropriateness of the response action. In addition to having an opportunity for judicial review as set forth in this section, recipients of section 106 orders have opportunities to participate directly in the process for selecting the appropriate response action and may seek reimbursement of response costs from other potentially responsible parties under section 107 of the Act.

The new procedures set forth in this amendment are designed simply to increase the incentive for potentially responsible parties to undertake response actions. This amendment is not necessitated by any constitutional infirmity of section 106, as enacted in 1980, which already affords adequate protection of potentially responsible parties' due process rights.

NATIONWIDE SERVICE OF PROCESS

SUMMARY

The reported bill amends section 113 of CERCLA to clarify and confirm that nationwide service of process is available under CERCLA.

DISCUSSION

Defendants in some actions brought personal jurisdiction through out-of-state service because of a lack of minimum contacts. This amendment expressly confirms that the United States may serve a defendant in any district where the defendant resides, transacts business, has appointed an agent for service of process, or may otherwise be found. Although service of process has been implicitly available under CERCLA, this amendment makes the availability of such service explicit, to avoid future arguments on the issue and to expedite government enforcement actions.

PREEMPTION

SUMMARY

The reported bill strikes section 114(c) of the Act to clarify that States are not preempted from imposing taxes for purposes already covered by CERCLA.

DISCUSSION

Clarification of section 114(c) appears desirable because of the litigation that has arisen from the original language in the statute. The litigation has been focused on the right of States to tax those substances which are taxed under the Federal Superfund law. To date, all decisions in State courts (including recent State Supreme Court rulings) have found that the Federal Superfund law does not preempt the rights of the States to raise taxes from these substances or through other special taxes. This litigation could continue for years. Any cloud of uncertainty over the legitimacy of these taxes should be removed at the earliest possible time.

It is widely recognized that States must develop their own taxes to meet their responsibilities for the State share of the cleanup costs at Superfund sites. In addition, States have responsibilities for managing and cleaning up hazardous materials not covered by the Federal program. Clarification of section 114(c) will allow the State to move forward and develop the tax mechanisms necessary for meeting the growing funding needs for response to hazardous substance releases and participation in the Superfund program, as well as for maintaining effective State hazardous waste programs.

The primary effect of the amendment will be to remove a potential barrier to the creation of State superfund programs. The amendment may result in an increase in the number and pace of hazardous substance response actions undertaken or partially funded by States, since States will be able to raise funds to assist such hazardous substance response.

FEDERAL FACILITIES CONCURRENCE

SUMMARY

This section amends section 115 of the Act to provide that the Administrator of the Environmental Protection Agency must concur in the selection of cleanup actions to be taken for Federal facilities. States that have entered into cooperative agreements with the EPA must also concur in the selection of cleanup actions. In addition, the administrative order authority of section 106 is statutorily delegated to the Administrator with respect to Federal facilities.

DISCUSSION

Federal agencies have not always been responsive to the problems of hazardous sbustance releases, and adequate corrective measures have not been taken at many Federal facilities. This has particularly been a concern for the Department of Defense facilities, for which the President by Executive Order delegated all authorities under CERCLA to the Secretary of Defense. This new section requires Federal agencies to respond to hazardous substance releases and assures that EPA retains the lead responsibility for cleanup actions. For Defense facilities, or others for which such delegation occurs, the EPA must concur in the selection of an adequate remedial action, and can order appropriate corrective action.

FEDERAL FACILITIES COMPLIANCE

SUMMARY

New section 117, added by the reported bill, requires the Administrator to compile a publicly-accessible "Federal Agency Hazardous Waste Compliance Docket" containing information on the location, nature and extent of hazardous substance use, storage or disposal of Federal agencies, developed under section 3016 of the solid Waste Disposal Act. The Administrator is required to take steps to assure that each agency conducts a preliminary assessment of such facilities within 18 months of enactment, and that following this assessment each facility is evaluated, in accordance with criteria established under CERCLA section 105 for priorities among releases, for potential enclusion on the National Priorities List.

Within one year after inclusion on the National Priorities List, each agency is require, in consultation with the Administrator, to commence a remedial investigation and feasibility study (RI/FS). No later than six months after completion of the RI/FS the Administrator is required to enter into an agreement with each agency providing a schedule for the expeditious cleanup and arrangement for long-term operations and maintenance of each facility. Each agency is required to complete cleanup as expeditiously as practicable after the date of the interagency agreeement and to include in its annual budget submissions to the Congress a request for funding adequate to complete cleanup, and a review of alternative agency funding which could be used to provide for the costs of cleanup. Each agency responsible for compliance shall furnish an annual report to the Congress detailing its progress in implementing the requirements of this new section.

New section 117(d) prohibits the delegation of authorities vested in the Administrator by this section to anyone other than employees of the EPA. New section 117(e) reaffirms that all provisions of CERCLA applicable to private facilities are applicable to Federal agencies in the same manner and to the same extent.

DISCUSSION

The principal purpose of this amendment is to improve Federal agency accountability and EPA oversight and regulatory authority with respect to hazardous waste sites on Federally-owned or controlled facilities or property. This section establishes a schedule for reporting and cleanup of sites owned or operated by the Federal government, formalizes EPA oversight over executive agencies, and reaffirms that all CERCLA guidelines, rules, regulations, and procedures applicable to private facilities are also applicable to Federal agencies in the same manner and to the same extent.

One of the purposes of this amendment is to encourage Federal agencies managing these contaminated sites to identify the resources needed for response. Such resources can then be sought through the appropriations process, rather than forcing the agencies to meet these needs by diverting funds from other objectives. The reported bill requires agencies to submit information on funding for remedial action. Where possible, agencies should anticipate the schedule and other requirements of this new section, and seek special funding for the preparation of the RI/FS and other preparatory work.

The intent of new section 117(c)(3) is not to specify items that must appear in the official Budget submitted by the President. Rather, each agency with a contaminated site needing remedial action must submit to the authorizing and appropriations committees of the Congress documentation of what funding is needed to complete the remedial action and a review of alternative agency funding which could be used for such purposes. The Agency must also provide a statement of the hazard which the facility poses to human health, welfare and the environment. This statement shall also identify the specific consequences of failure to begin and complete remedial actions.

CITIZEN SUITS

SUMMARY

The reported bill adds a new section 118 to CERCLA, providing a right for citizens to sue in Federal court to enforce standards, regulations, conditions, requirements and orders under the Act and to seek the performance of nondiscretionary duties under the Act by the President or delegees of the President. Prior to bringing such suits in Federal district court, a citizen is required to give 90 days notice to the State and the Federal government, and, where appropriate, to the alleged violator. No action may be brought under this

section if the State or Federal government is diligently prosecuting an enforcement action under CERCLA or the Solid Waste Disposal Act for the same violation. Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts, under new section 118(c). Conversely, the President or a delegee may intervene as a matter of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party. The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

DISCUSSION

A citizen suit provision has been a standard feature of each of the major environmental laws since the early 1970's. The reported bill adds such a provision to the Superfund law. Under this new authority, modeled on the citizen suit provisions of the Clean Air, Clean Water, and Solid Waste Disposal Acts, individuals may bring actions in Federal court against private parties to abate violations of CERCLA, and against Federal officials to seek performance of nondiscretionary duties under the Act.

The language of new section 118 makes clear that a citizen suit cannot be used to seek pre-enforcement judicial review of any remedial action or enforcement order. This is consistent with the clarification made elsewhere in the bill, eliminating pre-enforcement review of administrative orders.

All penalties awarded pursuant to this amendment, which allow courts in which citizen suits are brought ". . . to apply appropriate civil penalties under this Act," are to be paid into the United States Treasury. Litigation of any such request or the granting of any such award will not, in any way, limit or preclude the right of the United States to seek or obtain the payment of penalties arising out of the same or related violations, except that the maximum penalty to be paid for each violation shall not exceed that provided for in the relevant section.

The conditions placed on such suits are intended to assure that they will complement, and not interfere with, Federal regulatory and enforcement programs. Citizen suits under these amendments may only be initiated 90 days after the citizen has notified the President, the State in which the alleged violation occurred, and the alleged violator. If the United States or a State has commenced and is diligently prosecuting an action under this Act or the Solid Waste Disposal Act, an action under the new provision cannot be filed. It is recognized that 90 days is not sufficient time for the Agency to conduct all studies necessary to initiate an enforcement action. Nevertheless, based on current experience, this should provide enough time for the Agency to conduct an investigation satisfactory to the private parties, so that EPA and the private parties should be able to work out a mutually acceptable way to proceed.

A determination as to whether the Administrator or a State "has commenced and is diligently prosecuting" an action is, by necessity, a case-by-case detemination. "Commencement" of an action generally means having actually filed suit or having issued an administrative order. An action has not been "commenced" in a case that is merely under investigation or a case where only notice or warning letters have been sent . The scope of the relief being sought by the Administrator and the opportunity for citizens to intervene are factors to be considered when determining if a case if being "diligently prosecuted".

The reported bill gives a clear right of intervention to the Administrator. For example, if the Administrator believes a citizen suit under the provision is not being prosecuted in the public interest, he may exercise the right to intervene in such action and seek from the court restrictions or conditions upon the citizens suit, in order to assure that the means of prosecution and the relief sought are in the public interest. EPA and the Department of Justice are responsible for taking necessary steps to assure orderly and consistent development of cases law and legal interpretations, and technical consistency for enforcement. In view of the Agency's expertise in this area, courts will accord some deference to the Agency's technical findings concerning the nature and extent of the violation. The Administrator and the Department of Justice are encouraged to file amicus curiae briefs with the court, where appropriate.

These amendments provide any person with a statutory right to intervene as a party to suits filed by the Administrator or by a State under CERCLA or the Solid Waste Disposal Act, "unless the President or the State shows that the applicant's interest is adequately represented by existing parties." The rules on intervention are intended to assure that persons living in close proximity (persons potentially at risk) to the subject of the government-initiated action will be able to intervene as a matter of rights unless the President or the State can demonstrate that those persons' interests are being adequately represented. The purpose of the amendments is to make it easier for individuals who may be assuming an imminent and substantial risk as a result of the defendant's activities to participate in these suits, particularly in fashioning the appropriate remedy for eliminating the risk. By requiring the government to demonstrate that the applicant's interests are already represented, this amendment reverses the normal presumption of Rule 24 of the Federal Rules of Civil Procedure.

New section 118(e) authorizes the court to award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party or parties. As with similar provisions in other environmental citizens suit laws, this will encourage private enforcement by allowing such awards to private plaintiffs where the court determines that the bringing of the action was in the public interest, while discouraging frivolous suits by allowing costs to be awarded to defendants in appropriate cases. Where the United States is a prevailing defendant, costs of litigation include a reasonable calculation of costs attributable to Justice Department and other personnel involved in the defense.

Subsection (f) of the new citizen suit provision makes it clear that nothing in this Act restricts or modifies the rights of any person under Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief.

64

ADMINISTRATIVE CONFERENCE RECOMMENDATION

SUMMARY

This section would establish a congressional finding that Recommendation 84-4 of the Administrative Conference of the United States is generally consistent with the goals and purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and would direct the Administrator of the Environmental Protection Agency (EPA) to consider such Recommendation and implement it to the extent that so doing will expedite the cleanup of hazardous substances which have been released into the environment.

DISCUSSION

Recommendation 84-4 of the Administrative Conference of the United States consists of a series of steps that the EPA might take to encourage and facilitate negotiated private party cleanup of hazardous substances, in those situations where negotiations have a realistic chance of success. The purpose of encouraging such negotiated cleanups is to accelerate the rate of cleanup while reducing its expense by tapping the technical and financial resources of the private sector. However, the greater emphasis on negotiated cleanups that is recommended is not to replace or diminish an aggressive enforcement policy, but rather to complement it.

Implementation of the Administrative Conference recommendation does not require amendment to CERCLA, as it is also the belief of the Committee that Recommendation 84-4 is consistent with the goals and purposes of the Act.

Decisions how and to what extent to implement Recommendation 84-4 are within the discretion of the Administrator. The Administrator should pursue negotiated cleanups to the extent that negotation promises to expedite the overall cleanup effort, and not in cases in which negotiation is unlikely to be productive.

Recommendation 84-4 follows.

RECOMMENDATION 84-4

NEGOTIATED CLEANUP OF HAZARDOUS WASTE SITES UNDER CERCLA

(Adopted June 29, 1983)

By enacting the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in 1980, Congress undertook to provide a federal solution for the problem of abandoned and inactive hazardous waste disposal sites. Approximately 2,000 sites require action, at a cost of tens of billions of dollars. CERCLA created a $1.6 billion revolving "Superfund" for direct federal action to clean up these sites and respond to hazardous waste emergencies. The act supplements this public works authority with provisions for negotiating cleanups by "potentially responsible parties"—site owners and operators and users of sites as transportaters and waste generators. It also empowers the federal government to sue such parties for the cost of cleanups paid for out of the Superfund and, if waste disposal may present an "imminent and substantial endangerment," to sue for orders directing responsible parties to clean up sites themselves. The act is administered by the Environmental Protection Agency (EPA).

By early 1984, although EPA had responded to hazardous waste emergencies at many sites, only a handful of sites listed on a statutory national priority list by the agency had been completely cleaned up by the federal government. A few more sites had been cleaned up by private parties. The causes of delay were varied: uncertainty about the extent of the problem and the efficacy of technical remedies; start-up problems inherent in a new program; and a two-year long effort to negotiate cleanups so that no Superfund revenues would have to be spent. By mid-1983, the strategy of conserving the Superfund had fallen apart amidst a major leadership crisis within the EPA. In a policy reversal, Superfund expenditures for cleaning up sites then took priority over other means available under the statute for effecting cleanups.

The current agency approach to CERCLA emphasizes cleanups paid for out of the Superfund coupled with actions to recover the expenditures but also relies to a limited extent on negotiated cleanups and on lawsuits to compel responsible parties to act under CERCLA's imminent endangerment provision. This strategy has resulted in a CERCLA implementation effort that is slow and expensive.

Congress, the EPA, responsible parties, and othe critics have suggested several means of speeding up and economizing on site cleanups. These include enlarging the Superfund, setting program deadlines, expanding the EPA program offices, empowering citizens to sue, and encouraging voluntary cleanup by industry. Although enlarging the Fund, providing more staff, and setting program deadlines would tend to accelerate the CERCLA effort, the Administrative Conference believes that a properly designed site cleanup negotiation process, through which responsible parties or third parties would agree to act directly to clean up sites, would also hasten cleanup while reducing its expense by tapping the technical and financial resources of the private sector. Involvement of the federal government and affected citizens in this process would ensure adequate protection of public health and the environment.

Although current EPA policy permits the negotiation of cleanups, the agency puts too little stress on negotiations and has adopted a series of procedural and substantive requirements that unnecessarily constrict the number of negotiated cleanup agreements that the agency might beneficially conclude. The Conference recognizes, of course, that successful negotiations can only occur when private parties as well as the federal government are willing to respond to the problem of hazardous waste cleanup in good faith. The Conference intends no criticism of aggressive EPA enforcement efforts where responsible parties refuse to cooperate.

In this recommendation the Administrative Conference suggests a series of steps that the EPA might take to encourage and facilitate greater reliance on negotiated private party cleanups, in those situations where negotiations have a realistic chance of success.

RECOMMENDATION

1. The Environmental Protection Agency (EPA) should emphasize the negotiation of voluntary cleanups at hazardous waste dump sites. The negotiation process for any site should include, at an appropriate time and in a appropriate manner, the key interests, such as federal, state and local governments, parties potentially responsible for cleanup (including site users, site owners and operates, and waste transporters), and local citizens. Whenever possible, efforts to negotiate a cleanup agreement should begin well before the commencement of litigation concerning a site. To increase the likelihood that negotiations will succeed, the Administrator and other leading EPA officials, both at headquarters and in the regional offices, should support the negotiation process, follow its implementation, and be available to explain specific negotiated agreements before congressional oversight committees if necessary.

2. Citizens living in the vicinity of or otherwise directly affected by a site have a substantial interest in some issues related to the cleanup process—for example, medical diagnostic testing, relocation of public service facilities, measures to isolate the site, and the overall adequacy of the cleanup effort. Their interest in other aspects of the process, such as the allocation of costs among potentially responsible parties (or between potentially responsible parties and the government) is more problematic. EPA should consider means beyond complete reliance on local political institutions for involving these citizens, including the negotiation of collateral arrangements, participation of citizens' groups in negotiations over the type and scope of the remedy, and the like. Even if not participants, local citizens ordinarily should be permitted to observe those aspects of the negotiations that concern them.

3. Many negotiations can be conducted by EPA without outside assistance. In other cases, where outside assistance is desirable, EPA should encourage efforts by independent mediating organizations or individuals to convene negotiations. This can be accomplished by asking such a convenor at an early stage—no later than the commencement of "remedial investigations and feasibility studies" (a statutory cleanup stage)—to determine whether conditions are favorable for negotiations at a site. Favorable conditions include: issues that are ripe for decision; absence of fundamental conflict about values among those with a stake in the outcome; adequate representation and organization of key interests; opportunity for mutual gain for those with a stake; a balance of power among participants; willingness to bargain in good faith and share information; and willingness of units of government to participate as equal parties. Where negotiation appears feasible, the convenor should attempt to organize a site negotiate group from among the parties with a stake in the site cleanup. If an initial meeting of the parties is successful, the participants should consider retaining the convenor or another person to serve as mediator for the duration of negotiations. EPA should consider using Superfund resources to support an entity, such as a non-profit corporation or another agency, that would undertake this initial convening effort and provide mediation services if the parties desired them. Alternatively

EPA should consider providing these services through personal service contracts with skilled mediators.

4. In order to take advantage of private funds and expertise while they remain available, EPA should encourage and participate in negotiations for cleanup of sites where there is a high likelihood of successful negotiations, even if they have not yet been allocated federal funding for remedial investigations or been added to the National Priority List, unless such negotiations will distort the agency's priorities by diverting substantial agency resources or causing undue delay.

5. EPA should avoid wasting agency resources on unproductive negotiations by establishing, with the concurrence of other negotiating parties, reasonable deadlines for the conclusion of negotiations.

6. Successful negotiation requires that participation by all interests be through persons how, if not principals, have the confidence of, and easy access to, principals with the authority to make binding commitments. For EPA, the negotiators or persons readily accessible to the negotiators should have explicit, broad delegated authority to commit the agency to a negotiated outcome. To the extent that peer review and approval of agreements within the agency are nonetheless required, EPA should provide expedited means for obtaining them. One method of achieving this end would be for EPA headquarters to consolidate review of negotiated cleanups in a single panel of key officials.

7. The final agreement should take the form of an administrative consent order under section 106 of CERCLA or a judicial consent decree. Like other parties to the agreement, EPA should bind itself to undertake appropriate actions and follow agreed-upon schedules.

8. Negotiations undertaken in the context of litigation require procedures and standards different from the procedures and standards applicable to negotiations occurring before a matter reaches litigation. EPA should acknowledge that existing agency guidance memoranda on "case settlement policy" are appropriate for use only in litigation situations; to implement the proposed negotiation process, the agency should prepare new guidance memoranda that bring more appropriate factors to bear on prelitigation negotiations.

9. The Conference recognizes EPA's need to maintain a strong litigation posture in CERCLA cases in order to strengthen its ability to negotiate agreements in the public interest. However, the Conference also urges the agency to consider the possible advantages of greater flexibility in situations where cleanup arrangements are being negotiated rather than litigated. For example, in some cases it might be desirable for EPA to begin to negotiate even if 80 percent of cleanup costs has not been offered or to agree with the parties about the amounts of their individual responsibilities to pay cleanup costs even if the total responsibility adds up to less than 100 percent of cleanup costs (allocating Superfund resources to pay for the rest), as an incentive for cooperating parties to join promptly in an agreement. The intransigence of a few responsible parties should not be permitted to block agreement with others prepared to accept reasonable shares of responsibility; moreover,

such partial agreements may free agency resources to pursue the intransigent parties.

10. Although the Conference believes that its recommendation can be implemented without additional legislation, it acknowledges that the effectiveness of expanded reliance on negotiated cleanups would depend upon the degree of support or opposition from relevant congressional committees. If EPA undertakes efforts to clean up dump sites through a negotiation process like that described in this recommendation, congressional committees should support and encourage these efforts, recognizing that negotiated solutions inevitably involve compromises.

11. To promote achievement of its site cleanup management objectives, EPA should publish statements of its CERCLA policies, such as conditions for undertaking voluntary cleanup negotiations, procedures for public involvement in site cleanup decisions, and site study criteria, in the Federal Register and allow for public comment.

Authorization of Appropriations

SUMMARY

The reported bill amends CERCLA to make clear that (1) the proposed extension is for a five-year period and a total of $7.5 billion; and (2) the present structure assumes continuation of the current law's ratio of general and special revenues.

DISCUSSION

After receiving testimony from the Administrator of the Environmental Protection Agency, other governmental officials and outside witnesses, the Committee concluded that the Comprehensive Environmental Compensation and Liability Act should be extended for five years at a level of $7.5 billion. Under current law, funding for the program is derived from taxes on the chemical industry and contributions from the general fund on a roughly seven-eighths and one-eighth basis, respectively. Whether or not this ratio is continued, however, will be determined in part by the Committee on Finance, which has jurisdiction over the taxing aspects of CERCLA. For purposes of clarity, therefore, the reportetd bill amends section 303 to accomplish two ends:

First, establish the size of the Superfund program at $7.5 billion over the next five years.

Second, provide $206 million in authorizations of general fund appropriations, which assumes continuation of the current law's ratio between special and general revenues.

TITLE II

Animal Feed Exemption

SUMMARY

Title II of the reported bill contains a provision extending the tax exemption contained in current law for nitric acid, sulfuric acid, ammonia, and methane used to produce ammonia, when used to produce or manufacture fertilizer, to those same compounds when used as a nutrient in animal feed.

DISCUSSION

Under current law the animal feed industry expects to pay a little more than $1 million into the Fund in fiscal year 1985. In the event phosphoric acid were added to the list of chemical feedstocks contained in Title II of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 the cost to the animal feed industry would increase sevenfold, however, thereby sharply increasing the financial burden for livestock and poultry farmers.

The situation posed by the manufacture of animal feed is very similar to that for fertilizer. While the amount of revenue foregone as a result of extending to animal feed manufacturers the same exemption currently accorded the fertilizer industry is minimal, taxation of these compounds when used to supplement animal feed constitutes a burden on both the animal feed industry and the American agricultural sector which appears to be unnecessary.

HEARINGS

The Committee held two days of hearings, one of which was a field hearing held at Newark, N.J. Testimony was taken from representatives of Federal, State, and local government agencies, environmental and business groups, the medical profession, the academic community, and private individuals.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During the Committee's consideration of S. 51, there was one rollcall vote taken. The result was announced during the Committee's open meeting. The tabulation of that vote is on file in the Committee office. A second rollcall resulted in a 14-1 vote to report the bill. Voting in favor of reporting the bill were Senators Abdnor, Baucus, Bentsen, Burdick, Chafee, Domenici, Durenberger, Hart, Humphrey, Lautenberg, Mitchell, Moynihan, Simpson, and Stafford. Voting in the neagative was Senator Symms.

EVALUATION OF REGULATORY IMPACT

In compliance with the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the legislation.

The bill does not change, to any significant, extent, the number or groups or classes of individuals or activities presently subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Some provisions would have minimal regulatory impacts.

Section 104(c)(4) as modified requires that remedial action be selected according to certain specified criteria. This will require some regulatory and other amplification.

Amendments to section 105 require that the Administrator promulgate amendments to the National Contingency Plan to (1) implement the requirements of this Act and (2) promulgate amendment to the Hazard Ranking System. Neither is expected to create any significant regulatory burdens.

New section 103(i) requires that certain persons who manufacture or store any of a specific list of hazardous substances reports to government agencies on the quantities of these substances they handle and the quantities relased to the environment via various wastestreams. This reporting requirement applies to facilities with ten or more employees that manufacture hazardous substances or store hazardous substances in quantities greater than 6,000 kilograms.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 15, 1985.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 51, the Superfund Improvement Act of 1985, as ordered reported by the Senate Committee on Environment and Public Works, March 1, 1985.

S. 51 would authorize, amend, and expand Public Law 96-510, the Comprehensive Environmental Response, Compensation, and Libility Act of 1980 (CERCLA). For fiscal years 1986 through 1990, the bill would authorize general fund appropriations of $206 million annually to the Hazardous Substance Response Trust Fund (Superfund), plus any amounts previously authorized but not appropriated.

S. 51 would also create an experimental victim assistance demonstration program in states selected by the President, funded by up to $30 million annually from the Superfund. In addition, each year the lesser of $50 million or 5 percent of annual appropriations from the Superfund would be made available to the Agency for Toxic

Substances and Disease Registry for health-related activities. The bill would also permit Superfund money to be used to provide alternative water supplies in any case involving groundwater contamination from federal hazardous waste sites.

Under current law, the taxes imposed under CERCLA to fund Superfund will expire September 30, 1985. S. 51 as ordered reported by the Senate Committee on Environment and Public Works does not specify new tax provisions but rather states that combined taxes and general fund appropriations over five years shall total $7.5 billion. Assuming general fund appropriations of $206 million annually, tax rates would have to be set to produce $6.47 billion over five years in order to reach specified total. CERCLA authorizes the appropriation of any amounts in the fund, and this estimate assumes that all monies in the fund are appropriated each year. The following table summarizes the budget impact of this bill, assuming enactment of the necessary excise taxes.

BUDGET EFFECTS OF S. 51, ASSUMING TAX RATES ARE SET TO PRODUCE $6.47 BILLION BY 1990

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Spending effect:					
Estimated authorization level	1,550	1,500	1,500	1,500	1,500
Estimated Outlays	540	1,070	1,360	1,500	1,500
Revenue effect:					
Estimated revenues:					
Receipts from excise taxes	1,290	1,290	1,290	1,290	1,290
Less: Income tax offset	320	320	320	320	320
Net revenues	970	970	970	970	970
Total budget impact:					
Estimated revenues	970	970	970	970	970
Estimated outlays	540	1,070	1,360	1,500	1,500
Estimated increase (+) or decrease (−) in deficit	−430	100	390	530	530

The above estimates are relative to current law and assume that any new tax provisions would become effective October 1, 1986.

When compared to the CBO scorekeeping baseline, the net revenue increase under S. 51 would range from $760 million in 1986 to $730 million in 1990. The increase relative to the baseline is smaller than that shown in the table above, because the baseline assumes extension of Superfund taxes at current rates.

Section 136 of the bill would set requirements for federal agencies in handling hazardous waste sites at federal facilities. Each agency would be required to include in its annual budget request sufficient funds to complete remedial actions at these sites. This is not likely to result in a significant budget impact, because many such actions are already underway. For example, $314 million was appropriated to the Department of Defense in 1985 for this purpose. (The cost to clean up sites on Department of Defense lands has been estimated at about $1.6 billion through 1993. Most of the clean-up by civilian agencies would fall under the jurisdictions of the Department of the Interior and the Department of Energy).

A number of provisions of S. 51 would affect the budgets of state governments. The bill would amend Section 104 of the 1980 Act by expanding the state credit provisions and by allowing states to apply so-called window period (i.e., January 1, 1978 through December 11, 1980) retroactive credits to any eligible site within the state. Based upon information from the EPA, we estimate that the application of the retroactive credit provision would result in about $40 million in credits to the states.

In addition, S. 51 clarifies the definition of remedial action by including in it up to the first five years of groundwater treatment, which current law treats as operation and maintenance. The effect of this provision is to reduce potential costs to states, which currently must pay for only a portion of remedial actions but 100 percent of long-term operating and maintenance costs. The potential benefit could be substantial but is difficult to quantify. A rough estimate of savings to the states would be about $200 million over five years, based on information from the EPA. This provision is not expected to result in any new retroactive credits or refunds to states, since it appears that none are currently paying for remedial groundwater treatment at any Superfund site.

Finally, this bill would effectively repeal the provision of current law that preempts state taxing authority by eliminating subsection 114(c) of the 1980 act. This provision would enable states to impose any type of taxes necessary for purposes of recouping certain categories of state clean-up costs and related expenses.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANNSHEK
(For Rudolph G. Penner).

ADDITIONAL VIEWS OF SENATOR LAUTENBERG

Mr. Chairman, I would like to commend you and our ranking minority member, Senator Bentsen, for sticking to a rigorous schedule for consideration of the Superfund reauthorization. Approval of S. 51 by a vote of 14 to 1 sends a strong message to the Finance Committee and the Senate as a whole that we must make Superfund a top priority for early action this session.

The importance of an expanded and accelerated Superfund program cannot be understated. Citizens who live in continual fear, fear of contaminated groundwater, air, and soil from Superfund sites deserve to have this program implemented as quickly and effectively as possible. The sheer magnitude of the task, and the need for the Environmental Protection Agency and the states to make managerial and financial commitments without loss of continuity, requires that the Superfund program be reauthorized well before it expires in October, 1985.

Superfund sites are being added to the National Priority List at an astounding rate. There are 538 sites currently on the list and an additional 248 were proposed in October. The EPA estimates that the list will grow to 1800 to 2500 sites in the near term, and cost $11.7 billion to $22.7 billion from the federal fund alone to clean up. In a recently released report, the Office of Technology Assessment estimated that there are 10,000 or more sites that require clean up at a staggering cost of $100 billion.

It is imperative, therefore, that EPA have adequate resources to do the job ahead. While the Committee approved a funding level of $7.5 billion, I believe that a higher level of funding, at least $10 billion, is needed to ensure that EPA not only continues its current program but accelerates it in every way possible, including greater delegation to the States. The National Governors' Association recently reaffirmed their position that $9 billion is needed over the next five years to accomplish the federal and state program goals. To compel the Agency to conduct the cleanup program at the fastest possible pace, targets for listing and initiating studies and cleanup should also be adopted in the form of schedules.

On February 18, Committee conducted a Superfund field hearing in Newark, New Jersey which focused on the ability of federal, state and local governments and communities to prepare and respond to releases of hazardous substances into the environment. In response to a number of issues raised at the hearing, the Committee adopted provisions improving notification and penalties and establishing a national hazardous substance inventory. In addition, the hearing built a strong record for emergency planning, including release prevention, containment, and countermeasure plans for those handling substances that pose the greatest risk. However, inadequate time precluded the Committee from considering amendments in the area of prevention and emergency response. I look forward to working with other members of the Committee in developing these amendments before the bill is put before the full Senate for consideration.

The Superfund program, designed to prevent and respond to acute and chronic releases of hazardous substances to the environment, is of vital importance to the American public. The terrible tragedy in Bhopal, India was a grim reminder. Congress must renew its commitment to the program at the earliest possible time.

FRANK R. LAUTENBERG.

ADDITIONAL VIEWS OF SENATOR SIMPSON

The Committee has now reported a bill—substantially similar to one we reported last year—reauthorizing the Superfund statute. Although we have made certain improvements in this legislation, I wish to point out several problems that I feel remain. My concerns can be divided into two categories: Those that were taken into account by the Committee—and those that I feel may not adequately have been taken into account.

My overriding concern, which I share with this Administration, is that the Superfund may be asked to do so many things that it will not be doing its greatest task as expeditiously as it might—that "greatest task", of course, is the clean-up of hazardous waste sites. While the bill somewhat limits the scope of the fund, I would prefer an explicit focus on the primary goal, with more discretion left to the Agency as to how it will accomplish that goal.

Of the provisions that were added during the last work up, the new "Citizen Suit" language concerns me greatly. It is representative of the way in which laudatory goals can potentially disrupt a program. There was never any suggestion that there was a need for this new provision. Instead, it was merely assumed that there was such a "need", and now that "need" has been met.

The approach of limiting the provisions to "non-discretionary" actions of the President, particularly when decisions as to site remediation are excluded, appears reasonable. But soon there will be cases that challenge interpretations of "non-discretionary" in the attempt to make the tool more useful. Further, the presence of the provision may encourage some to seek an increasing number of non-discretionary actions to be placed into CERCLA.

Another important amendment to this bill was the addition of Senator Mitchell's "Victim Assistance" provisions, designed to provide medical insurance for individuals alleging injury or disease as a consequence of exposure to a hazardous substance. Although Senator Mitchell and I have sometimes found ourselves on opposite sides of the fence on these issues, we do share a fundamental concern for the health of the people and a desire to determine, once and for all, whether there is a major health problem arising from these sites. We enjoyed working together on some of the amendment language, and he eventually decided to maintain some of the language on which we had agreed. Nonetheless, in the end, I could not cosponsor or support the amendment. I appreciated his fine cooperation.

Senator Mitchell's amendment is, in my judgment, much improved over earlier versions. But his improvements, particularly in limiting what I considered to be ill-advised levels of benefits which could disrupt existing health care systems, also served to refocus my thinking on the ultimate question which is: Should we, as a society, allocate resources to compensate individuals, above and beyond what is generally available, solely because they are injured as a result of certain risks that are singled out on the basis of political muscle or immediate public concern?

The other problem one faces in attempting to craft policy in the area of "victim assistance" is the causation question. We simply do not have the present ability to link the alleged injury or disease of an individual with the exposure which allegedly "caused" it. Senator Mitchell's amendment is an admirable effort toward making that link, but there remains an area of murky uncertainty that will lead to problems ahead, if the program is eventually expanded. Although I have expressed the view that I could support a tightly-crafted program analogous to the Agent Orange approach worked out by Senator Cranston and I on the Veterans' Committee last year, I have come to have doubts that such an approach is really transferable to the broader context of hazardous substance exposure.

While the legal and scientific questions appear disturbingly unfamiliar, the likely public policy outcome looks disturbingly familiar—and, as we are now learning in area after area in our government, the road back from trying to build up broken-down initiatives is not an easy one.

Finally, I would like to express my concern over some of the issues not raised during the work on this legislation—concerns that, while pushed to one side for now, may well come to haunt us as we review the contined effectiveness of the CERCLA program. One such issue is that of the liability faced by potentially responsible parties at sites. Now that it has been held by several courts that a "strict, joint and several" standard may be applied, the question of whether a right of contribution exists has become critical. This legislation answers that question in the affirmative, and also provides so-called "Contribution protection" to encourage parties to settle. It is the hope of the EPA and Department of Justice that the liability standard, combined with the new pre-enforcement review language in the statute, will encourage voluntary clean-up and expedited action generally.

At the same time we are hearing that "Transaction costs"—economists' language for lawyers' fees and administrative costs—are, in at least a few cases, approaching or surpassing the projected clean-up costs at sites. Although such evidence now is merely anecdotal, it is nonethless disturbing. I do hope to learn more about this in the months ahead; and will urge EPA and the Department of Justice to inquire into the matter closely, and to share information on the entire matter of transaction costs with the Congress.

I am pleased that the EPA is presently looking into these insurance issues, and that our Committee will soon hold a hearing to examine them. I would hope that we will listen to these new questions carefully, and be willing to carefully consider whatever implications may be suggested for the manner in which we have chosen, as a society, to implement the urgent task of caring for and restoring our nation's remarkable treasures of nature.

ALAN K. SIMPSON.

MINORITY VIEWS OF SENATOR SYMMS

In the end, I must vote against the bill as it is to be reported from Committee—not because I am against the program of cleaning up hazardous waste, but because I feel that we could approach it more effectively. At a time of billion-dollar deficits, there is more reason than ever to look at where our tax dollars are going. We have every reason to think that this bill spends too much money, and will not achieve enhanced public health as part of the bargain.

The Administration, led by the able Administrator of the EPA, Lee Thomas, argued strongly that it simply could not spend more than the $5 billion over 5 years that it requested. Lee Thomas recently served as the head of EPA's solid waste program, and, in light of his fine performance, I would have thought that his views would have received special weight. Nonetheless, the Committee voted to spend $7.5 billion over the 5 years. Since this additional money cannot be shown to contribute to better public health, I see the Committee's action as merely enlarging the Federal bureaucracy. I would have wholeheartedly supported a budget at the level requested by EPA. I must now vote against a level of funding that is so ineffectively high.

Another trend that is continued, to the detriment of this legislation, is the unfortunate tendency to add new resource requirements to the fund. The problem is that the scope of the Fund has not been narrowed and clarified to the degree that the Administration sought and that I could support. The Fund continues to go beyond cleanup with the inclusion of provisions such as victim assistance. History has shown us that the constituency of such programs has not tended to shrink upon enactment, and I fear that this will be no exception. My ultimate concern is that in using so much of our resources to determine whether there is a health problem arising from these sites, we may find that clean-up is delayed—and whatever health problem there is will be exacerbated. On this matter of the expansion of the roles of the Fund, I find myself in concurrence with the additional views of Senator Simpson.

STEVE SYMMS.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

Public Law 96-510

AN ACT To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

Sec. 101. For purpose of this title, the term—

* * * * * * *

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, [or] any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe;

* * * * * * *

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threat-

ened individuals not otherwise provided for, *costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare,* action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974[;]. *In the case of a business located in an area of evacuation or relocation, the term may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and thirty days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, it may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974: Provided, That the costs of such assistance shall be paid from the Trust Fund;*

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances [or] *and associated* contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment, *as well as the offsite transport and offsite storage, treatment destruction of hazardous substances and associated contaminated materials.* The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare[.]*;* [The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or

potential risk which may be created by further exposure to the continued presence of such substances or materials;]

* * * * * * *

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act[.]*;*

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; [and]

(32) "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act[.]*;*

(33) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, incluidng any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and serious provided by the United States to Indians because of their status as Indians; and

(34) "alternative water supplies" includes, but is not limited to, drinking water and household water supplies.

NOTICES, PENALTIES, *AND INVENTORY*

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify *(1)* the National Response Center established under the Clean Water Act of such release, *and (2), in the case of any such release of a hazardous substance with a reportable quantity of one pound or less or any release of any other hazardous substance in a quantity determined by the President by regulation to potentially require emergency response, all State and local emergency response officials identified under any local contingency plan or otherwise likely to be affected by the release.* The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appro-

priate agency of the United States Government *(or, in the case of a release to which subsection (a)(2) applies, any appropriate State or local emergency response official)* as soon as he has knowledge of such release shall, upon conviction, be fined not more than **[**$10,000 or imprisoned for not more than one year, or both.**]** *$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).* Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

* * * * * * *

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined not more than **[**$20,000,**]** *$25,000,* or imprisoned for not more than one year, or both.

* * * * * * *

(g)(1) In addition to any other relief provided, whenever on the basis of any information available to the President the President finds that any person is in violation of subsection (a) or (b) of this section the President may assess a civil penalty of not more than $10,000 for each failure to notify the appropriate agency. The penalty under this subsection shall increase to not more than $25,000 for a second violation by the same person, not more than $50,000 for a third violation by the same person, and not more than $75,000 for a fourth or subsequent violation by the same person.

(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such

violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(5) The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(6) Action taken by the President pursuant to this subsection shall not affect or limit the President's authority to enforce any provision of this Act: Provided, however, That a failure to notify the appropriate agency which is penalized administratively under this subsection shall not be the subject of a criminal penalty under subsection (b) of this section.

(h)(1) Each facility owner or operator that (A)(i) manufactures a hazardous substance (as defined in section 101(14) of this Act), or (ii) stores six thousand kilograms or more of such hazardous substance, and (B) has ten or more full-time employees, shall complete and distribute a Hazardous Substances Inventory form as published under paragraph (2) of this subsection within 180 days after the enactment of the Superfund Improvement Act of 1985 and every twenty-four months thereafter, or more often as changed circumstances require. For the purposes of this subsection, a mixture containing more than 1 per centum of any hazardous substance covered by this section shall be considered a hazardous substance.

(2) The President shall publish the Hazardous Substances Inventory form in the Federal Register within sixty days after the date of enactment of the Superfund Improvement Act of 1985. Publication of such form shall be exempt from the requirements of the Paper-

work Reduction Act and Office of Management and Budget Circular A-40 (title 5 of the Code of Federal Regulations, part 1320).

(3) The Hazardous Substances Inventory form shall provide for submission of the following information for each hazardous substance:

(A) the description of the use of the hazardous substance at the facility, including, but not limited to, the quantity of the hazardous substance produced or consumed at such facility;

(B) the maximum inventory of the hazardous substance stored at the facility, the method of storage, and the frequency and methods of transfer;

(C) for each of the following, the annual and monthly total emissions or discharge of each hazardous substance for the calendar year immediately preceding the submission of the Hazardous Substances Inventory form:

(i) the stack or point-source emissions;

(ii) the estimated fugitive or non point-source emissions of the hazardous substances;

(iii) the discharge into the surface water or groundwater, the treatment methods, and the raw wastewater volumes and loadings; and

(iv) the discharge into publicly-owned treatment works;

(D) the quantity and methods of disposal of any wastes containing the hazardous substance, the method of onsite storage of such wastes, the location or locations of the final disposal site of such wastes, and the identity of the transporter of such wastes;

(E) the month and year that the information on the Hazardous Substances Inventory was compiled and the name, address, and emergency telephone number of the person responsible for preparing the information.

For the purposes of this paragraph, facility owners and operators may utilize readily available data collected pursuant to other State and Federal environmental laws.

(4) Each person who submits a form pursuant to the requirements of this subsection shall attach thereto a copy of the Material Safety Data Sheet, required pursuant to the Occupational Safety and Health Act, pertaining to the hazardous substance that is reported in the form.

(5) The Hazardous Substances Inventory shall be distributed by the facility owner or operator to, at a minimum, the President; State and local emergency and medical response personnel; the State police, health and environmental departments; area police and fire departments; area emergency medical services; area hospitals; and area libraries.

(6) The President, for the purposes of this subsection, shall establish a toll-free telephone number, operating twenty-four hours per day, that is computer accessible, to respond to telephone inquiries concerning the Hazardous Substances Inventory and the information contained therein. Within sixty days of establishment of such a telephone line, the President shall inform appropriate State and local officials.

(7)(A) The President may verify the data contained in the Hazardous Substances Inventory form using the authority of section 104(e) of this Act.

(B) Information submitted under this subsection shall be treated as information submitted under section 104(e) and shall be subject to the provisions of section 104(e)(2).

(8) Any person who knowingly omits material information or makes any false material statement or representation in the Hazardous Substances Inventory, shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than one year, or both.

(9) Nothing in this subsection shall be construed to limit the ability of any State to require submission of information related to hazardous substances, or to require additional distribution of the Hazardous Substances Inventory form from facilities operating within its borders.

(i)(1) Every two years after the date of enactment of the Superfund Improvement Act of 1985, the National Toxicology Program, in consultation with appropriate Federal agencies, shall review new and existing chemicals and compile a list of substances to supplement those referred to in subsection (h), taking into account, at a minimum, the reactivity, toxicity, volatility, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, and production levels of the chemical.

(2) Within one hundred and eighty days after publication of the list compiled by the National Toxicology Program, the President shall promulgate such list of substances as those requiring preparation and distribution of the Hazardous Substances Inventory under this Act, unless the President demonstrates that a particular hazardous substance does not present a risk equal to or greater than those substances referred to in subsection (h)(1). In the event that the President decides not to list a hazardous substance, the President shall, with opportunity for public notice and comment, state the basis on which the hazardous substance was not considered to present a risk sufficient to warrant preparation and distribution of the Hazardous Substances Inventory.

RESPONSE AUTHORITIES

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment**[**,**]**. **[**unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.] *The President shall give primary attention to those releases which may present a public health threat. The President may authorize the owner or operator of the vessel or facility from which the release or threat of release emanates, or any other responsible party, to perform the removal or remedial action if the President determines that such action will be done properly by the owner, operator, or responsible party.*

(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(3) The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within a facility; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section the President may respond to any release or threat of release if in the President's discretion it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

* * * * * * *

(c)(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, *or (C) continued response action is otherwise appropriate and consistent with permanent remedy,* obligations from the Fund, other than those *for permanent relocation or* authorized by subsection (b) of this section, shall not continue after $1,000,000 has been obligated for response actions or [six months] *one year* has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or **[**(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.**]** *(ii) 50 per centum (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of subparagraph (C)(ii) of this paragraph, the term "facility" does not include navigable waters or the beds underlying those waters. In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the President shall grant the State a credit for amounts expended or obligated by such State or by a political subdivision thereof after January 1, 1978, and before December 11, 1980, for any response action costs which are covered by section 111(a) (1) or (2) and which are incurred at a facility or release listed pursuant to section 105(8). Such credit shall have the effect of reducing the amount which the State would otherwise be required to pay in connection with assistance under this section. The President shall grant the State a credit against the share of costs for which it is responsible under this paragraph for any reasonable, documented,*

direct out-of-pocket non-Federal funds expended or obligated by the State under a contract or cooperative agreement under the last sentence of subsection (d)(1). In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility. In the case of any State which has paid, at any time after the date of the enactment of the Superfund Improvement Act of 1985, in excess of 10 per centum of the costs of remedial action at a facility owned but not operated by such State or by a political subdivision thereof, the President shall use money in the Fund to provide reimbursement to such State for the amount of such excess.

[(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.**]**

(4)(A) The President shall select appropriate remedial actions determined to be necessary to carry out this section which, to the extent practicable, are in accordance with the national contingency plan and which provide for cost-effective response. In evaluating the cost-effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(B) Remedial actions in which treatment which significantly reduces the volume, toxicity or mobility of the hazardous substances is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action, where practicable treatment technologies are available.

(C) Remedial actions selected under this paragraph or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants from the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

(D) No permit shall be required under subtitle C of the Solid Waste Disposal Act, section 402 or 404 of the Clean Water Act, in section 10 of the Rivers and Harbors Act of 1899, for the portion of any removal or remedial action conducted pursuant to this Act en-

tirely onsite: Provided, That any onsite treatment, storage, or disposal of hazardous substances, pollutants, or contaminants shall comply with the requirements of subparagraph (C).

(E) Subject to the requirements of this paragraph, the President shall select the appropriate remedial action which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

(5) For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period up to five years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(6) During any period after the availability of funds received by the Trust Fund under sections 4611 and 4661 of the Internal Revenue Code of 1954 or section 221(b)(2) or section 303(b) of this Act, the Federal share of the payment of costs for operation and maintenance pursuant to paragraph (3)(C)(i) or paragraph (5) of this subsection shall be from funds received by the Trust Fund under section 221(b)(1)(B).

(7) Effective three years after the date of enactment of the Superfund Improvement Act of 1985, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act with adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the twenty-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed.

[(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.]

(d)(1) Where the President determines that a State or political subdivision or Indian tribe has the capability to carry out any or all of

the actions authorized in this section, the President may, in the discretion of the President and subject to such terms as the President may prescribe, enter into a contract or cooperative agreement and combine any existing cooperative agreements with such State or political subdivision or Indian tribe (which may cover a specific facility or facilities) to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed from the Fund for the reasonable response costs and related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities authorized by this Act. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section. For the purposes of the last sentence of subsection (c)(3) of this section, the President may enter into a contract or cooperative agreement with a State under this paragraph under which such State will take response actions in connection with releases listed pursuant to section 105(8)(B), using non-Federal funds for such response actions, in advance of and without any obligation by the President of amounts from the Fund for such response actions.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

[(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

[(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

[(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.]

(e)(1) For the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title, any officer, employee, or representative of the President, duly designated by the President, or any duly designated officer, employee, or representative of a State, is authorized where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance—

(A) to require any person who has or may have information relevant to (i) the identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility, or (ii) the nature or extent of a release or threatened release of a hazardous substance at or from a facility, to furnish, upon reasonable notice, information or documents relating to such matters. In addition, upon reasonable notice, such person either shall grant to appropriate representatives access at all reasonable times to inspect all documents or records relating to such matters or shall copy and furnish to the representatives all such documents or records, at the option of such person;

(B) to enter at reasonable times any establishment or other place or property (i) where hazardous substances are, may be, or have been generated, stored, treated, disposed of, or transported from, (ii) from which or to which hazardous substances have been or may have been released, (iii) where such release is or may be threatened, or (iv) where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title; and

(C) to inspect and obtain samples from such establishment or other place or property or location of any suspected hazardous substance and to inspect and obtain samples of any containers or labeling for suspected hazardous substances. Each such inspection shall be completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. If any analysis is made of such samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(2)(A) If consent is not granted regarding a request made by a duly designated officer, employee, or representative under paragraph (1), the President, upon such notice and an opportunity for consultation as is reasonably appropriate under the circumstances, may issue an order to such person directing compliance with the request, and the President may ask the Attorney General to commence a civil action to compel compliance.

(B) In any civil action brought to obtain compliance with the order, the court shall, where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance: (i) in the case of interference with entry or inspection, enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection, unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or not in accordance with law; and (ii) in the case of information or document requests, enjoin interference with such information or document requests or direct compliance with orders to provide such information or documents, unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or not in accordance with law. The court may assess a civil penalty not to exceed $10,000 against any person who unreasonably fails to comply with the provisions of paragraph (1) or an order issued pursuant to paragraph (2).

(3) Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

(4) Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the President who is properly cleared.

[(2)(A)] *(5)(A)* Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

* * * * * * *

(i)*(1)* There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to [the Surgeon General of the United States.] *The Secretary of Health and Human Services.* The Administrator of said Agency *(hereinafter in this sub-*

section referred to as "the Administrator") shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(1)] *(A)* in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

[(2)] *(B)* establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

[(3)] *(C)* in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

[(4)] *(D)* in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, [chromosomal testing,] *appropriate testing* epidemiological studies, or any other assistance appropriate under the circumstances; and

[(5)] *(E)* either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(2) The Agency for Toxic Substances and Disease Registry shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Environmental Protection Agency, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

(3)(A) The Administrator shall perform a health assessment for each release, threatened release or facility on the National Priority List established under section 105. Such health assessment shall be completed not later than two years after the date of enactment of the Superfund Improvement Act of 1985 for each release, threatened release or facility proposed for inclusion on such list prior to such date of enactment or not later than one year after the date of proposal for inclusion on such list for each release, threatened release or facility proposed for inclusion on such list after such date of enactment. The Administrator shall also perform a health assessment for each facility for which one is required under section 3019 of the Solid Waste Disposal Act and, upon request of the Administrator of the Environmental Protection Agency or a State, for each facility subject to this Act or subtitle C of the Solid Waste Disposal Act,

where there is sufficient data as to what hazardous substances are present in such facility.

(B) The Administrator may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator providing such information and requesting a health assessment. If such a petition is submitted and the Administrator does not initiate a health assessment, the Administrator shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining sites at which to conduct health assessments under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subparagraph (E).

(D) Any State or political subdivision carrying out an assessment shall report the results of the assessment to the Administrator of such Agency, and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of such Agency shall include the same recommendation in a report on the results of any assessment carried out directly by the Agency, and shall issue periodic reports which include the results of all the assessments carried out under this paragraph.

(E) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(F) At the completion of each health assessment the Administrator shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment,

together with any recommendations for further action under this subsection or otherwise under this Act.

(G) In any case in which a health assessment performed under this paragraph (including one required by section 3019 of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such releases.

(4) Whenever, in the judgment of the Administrator, it is appropriate on the basis of the results of a health assessment, the Administrator shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population. Whenever in the judgment of the Administrator it is appropriate on the basis of the results of such pilot study, the Administrator shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects for the population exposed to hazardous substances in a release or suspected release.

(5) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(6) The Administrator shall conduct a study, and report to the Congress within two years after the date of enactment of the Superfund Improvement Act of 1985, on the usefulness, costs, and potential implications of medical surveillance programs as a part of the health studies authorized by this section. Such study shall include, at a minimum, programs which identify diseases for which an exposed population is at excess risk, provide periodic medical testing to screen for such diseases in subgroups of the exposed population at highest risk, and provide for a mechanism to refer for treatment individuals who are diagnosed as having such diseases.

(7) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

(1) provision of alternative water supplies, and

(2) permanent or temporarily relocation of individuals.

(8) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President or the Administrator of the Environmental Protection Agency to exercise any authority vested in the President or such Administrator under any other provision of

law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

(9)(A) The Administrator shall, within six months after the date of enactment of the Superfund Improvement Act of 1985, prepare a list of at least one hundred hazardous substances which the Administrator, in his sole discretion, determines are those posing the most significant potential threat to human health due to their common presence at the location of responses under section 104 or at facilities on the National Priority List or in releases to which a response under section 104 is under consideration. Within twenty-four months after enactment, the Administrator shall prepare a list of an additional one hundred or more such hazardous substances. The Administrator shall not less often than once every year thereafter add to such list other substances which are frequently so found or otherwise pose a potentially significant threat to human health by reason of their physical, chemical, or biological nature.

(B) For each such hazardous substance listed pursuant to subparagraph (A), the Administrator (in consultation with other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator, in cooperation with the Director of the National Toxicology Programs, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Such program shall include, but not be limited to—

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(C) In assessing the need to perform laboratory and other studies, as required by subparagraph (B), the Administrator shall consider—

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by subparagraph (F) of this paragraph; and

(iii) such other scientific and technical factors as the Administrator may determine are necessary for the effective implementation of this subsection.

(D) In the development and implementation of any research program under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry and the Administrator of the

Environmental Protection Agency shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, in the discretion of the Administrator and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(E) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Where this is not practical, the costs of such research programs should be borne by parties responsible for the release of the hazardous substance in question. To carry out such intention, the costs of conducting such a research program under this paragraph shall be deemed a cost of response for the purposes of recovery under section 107 of such costs from a party responsible for a release of such hazardous substance.

(F) Based on all available information, including data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator shall prepare toxicological profiles sufficient to establish the likely effect on human health of each of the substances listed pursuant to subparagraph (A). Such profiles shall be revised and republished as necessary, but no less often than once every five years. Such profiles shall be provided to the States and made available to other interested parties.

(10) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry.

(11) In the implementation of this subsection and other health-related authorities of this Act, the Administrator is authorized to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to toxic substances, through such means as the Administrator deems appropriate. Not later than two years after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall report to the Congress on the implementation of this paragraph.

(12) For the purpose of implementing this subsection and other health-related authorities of this Act, the President shall provide

adequate personnel to the Agency for Toxic Substances and Disease Registry, which shall be no fewer than one hundred full time equivalent employees.

(13) The activities described in this subsection and section 111(c)(4) shall be carried out by the Agency for Toxic Substances and Disease Registry established by paragraph (1), either directly, or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of such Agency determines are capable of carrying out such activities. Such activities shall include the provision of consultations on health information, and the conduct of health assessments, including those required under section 3019 of the Solid Waste Disposal Act, health studies and registries.

(j) Before selection of appropriate remedial action to be undertaken by the United States or a State or before entering into a covenant not to sue or to forebear from suit or otherwise settle or dispose of a claim arising under this Act, notice of such proposed action and an opportunity for a public meeting in the affected area, as well as a reasonable opportunity to comment, shall be afforded to the public prior to final adoption or entry. Notice shall be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposal and alternative proposals considered.

(k) In determining priorities among releases and threatened releases under the National Contingency Plan and in carrying out remedial action under this section, the Administrator shall establish a high priority for the acquisition of all properties (including nonowner occupied residential, commerical, public, religious, and vacant properties) in the area in which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner occupied residences have been acquired pursuant to such determination.

(l)(1) If the President determines that one or more responsible parties will properly carry out action under subsection (b) of this section, the President may enter into a consent administrative order with such party or parties for that purpose.

(2) The United States district court for the district in which the release has occurred or threatens to occur shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $10,000 for each day in which such violation occurs or such failure to comply continues.

NATIONAL CONTINGENCY PLAN

SEC. 105. *(a)* Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. *A State shall be allowed to designate its highest priority facility only once.* To the extent practicable, [at least four hundred of] the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities [at least] one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

(b) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as "the National Hazardous Substance Response Plan" shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Improvement Act of 1985 relating to the selection of remedial action.

(c) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985 and such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue to full force and effect.

ABATEMENT ACTION

SEC. 106. (a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b) *(1)* Any person who willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than [$5,000] *$10,000* for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within sixty days of completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within thirty days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order: Provided, however, That a petitioner who is liable for response costs under section 107(a) may recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in issuing the order was arbitrary and capricious or otherwise not in accordance with law. In any such case, the petitioner may be awarded all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

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LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel [(otherwise subject to the jurisdiction of the United States)] or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State *or an Indian tribe* not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

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(d)*(1)* No person shall be liable under this title for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(2) No State or local government shall be liable under this title for costs or damages as a result of non-negligent actions taken in response to an emergency created by the release of a hazardous substance, pollutant, or contaminant generated by or from a facility owned by another person.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) The Administrator may, in contracting or arranging for response action to be undertaken under this Act, agree to hold harmless and indemnify a contracting party against claims, including the expenses of litigation or settlement, by third persons for death, bodily injury or loss of or damage to property arising out of performance of a cleanup agreement to the extent that such claim does not arise out of the negligence of the contracting party.

[(2)**]** *(3)* Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f)*(1)* In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State *and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: Provided, however,* That no liability to the United States or State *or Indian tribe* shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, *so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.* The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government *or Indian tribe,* but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2)(A) The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

(B) The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this

Act and section 311 of the Clean Water Act for those resources under their trusteeship.

(C) Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.

(D) The President shall promulgate the regulations required under section 301 of this Act not later than six months after the enactment of the Superfund Improvement Act of 1985.

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(i) No person (including the United States or any State *or Indian tribe*) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Recovery by any person (including the United States or any State *or Indian tribe*) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

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(l)(1) In any civil or administrative action under this section or section 106, no claim for contribution or indemnification may be brought until after entry of judgment or date of settlement in good faith. Nothing in this subsection shall diminish the right of any person to bring an action for contribution or indemnification in the absence of a civil or administrative action under this section or section 106.

(2) After judgment in any civil action under section 106 or under subsection (a) of this section, any defendant held liable in the action may bring a separate action for contribution against any other person liable or potentially liable under subsection (a). Such an action shall be brought in accordance with section 113. Except as provided in paragraph (4) of the subsection, this subsection shall not impair any right of indemnity under existing law.

(3) When a person has resolved its liability to the United States or a State in a judicially approved good faith settlement, such person shall not be liable for claims for contribution under paragraph (2) of this subsection regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others to the extent of any amount stipulated by the settlement.

(4) Where the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in a good faith settlement, the United States or the State may bring an action for the remainder of the relief sought against any person who has not so resolved its liability. A person that has resolved its liability to the United States or a State in a good faith settlement may, where appropriate, maintain an action for contribution or indemnification against any person that was not a party to the settlement. In any action under this paragraph, the rights of a State or any person that has resolved its liability to the United States or a State shall be subordinate to the rights of the United States. Any contribution action brought under this paragraph shall be brought in accordance with section 113.

(m)(1) All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property belonging to such person that are subject to or affected by a removal or remedial action.

(2) The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act and shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113(e).

(3) The lien imposed by this subsection shall not be valid as against any purchaser, holder of a security interest, or judgment lien creditor until notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided in section 6323(h) of title 26, United States Code. This paragraph does not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

(4) The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. *Finan-*

cial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

[(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

[(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.]

(c) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all

rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(d) The total liability under this Act of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Act: Provided, That nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim: Provided further, That nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under section 107 or 111 of this Act or other applicable law.

* * * * * * *

USES OF FUND

SEC. 111. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act;

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official;

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; and

(4) payment of costs specified under subsection (c) of this section.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, *or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.*

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

(2) the costs of Federal or State *or Indian tribe* efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) *in accordance with subsection (n) of this section and section 104(i),* the costs of [epidemiologic studies,] *epidemiologic and laboratory studies and health assessments,* development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan; [and]

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees[.] *and;*

(7) the costs of grants under subsection (m), not to exceed a total of $30,000,000 per fiscal year, to be provided out of funds received by the Trust Fund under section 303(b).

* * * * * * *

(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. *No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.*

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities*: Provided, That money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.*

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State *or Indian tribe* operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide rea-

sonable notice to potential injured parties by publication in local newspapers serving the affected area.

[(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

[(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.]

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, *and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,* after adequate public notice and opportunity for hearing and consideration of all public comment.

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(m)(1) In the case of any geographic area (as identified by the Agency for Toxic Substances and Disease Registry) for which a health assessment or other health study performed under section 104(i) indicates that—

(A) there is a disease or injury for which the population of such area is placed at significantly increased risk as a result of a release of a hazardous substance;

(B) such disease or injury has been demonstrated by peer reviewed studies to be associated (using sound scientific and medical criteria) with exposure to a hazardous substance; and

(C) the geographical area contains individuals within the population who have been exposed to a hazardous substance in a release,

the State in which such area is located may apply to the Administrator of the Environmental Protection Agency to operate an experimental demonstration assistance program under this subsection.

(2) From areas nominated under paragraph (1) the President shall select, during each of fiscal years 1986 and 1987, no less than five or more than ten areas for demonstration assistance programs under this subsection. Such selections shall be made in the discretion of the President, taking into account—

(A) the experience of State and local governments in administering programs which deal with the regulation of toxic chemicals and hazardous substances; and

(B) the representative nature of the hazardous substance releases and exposures in terms of the identities and toxic characteristics of the substances found, the manner and degree of exposure, the scientific and medical method used to determine such exposure, and the seriousness and duration of the diseases or illnesses caused.

(3) For each area selected under paragraph (2) the State shall establish and operate for a period of not less than three years or more than five years a program of medical assistance to individuals who, according to health assessments or other studies done under section 104(i) have been placed at significantly increased risk of disease or injury due to exposure to a hazardous substance from a release. The President shall make a grant for each such area in an amount of not less than $1,000,000 nor more than $10,000,000 per fiscal year (and a total for all such grants of not more than $30,000,000 per fiscal year), but in no event shall grants be made in fewer than five States.

(4) Programs funded pursuant to this subsection shall not provide assistance in the case of any area or class of individuals in which a solvent responsible party who may be liable under section 107 is paying compensation for claims or otherwise providing medical assistance, comparable (though not necessarily identical in scope or duration) to assistance under this subsection. If a party has accepted liability for such claims or assistance, no assistance shall be available under this subsection even though the party may not have commenced assistance at the time of an application by a State.

(5) A program established and operated under this subsection shall provide the following assistance:

(A) appropriate medical screening, examination and testing (in accordance with sound medical procedures) as necessary to determine the presence in individuals of the disease or injury for which the population of the geographic area is at significantly increased risk;

(B) for individuals with no present symptoms of such disease or injury, a group medical benefits policy providing the reasonable costs of periodic medical screening, testing or examination (in accordance with sound medical procedures), as necessary to determine the presence of such symptoms; and

(C) for individuals with present symptoms of such disease or injury (or who develop such symptoms)—

(i) reimbursement of the out-of-pocket costs of related medical expenses in connection with such disease or injury previously incurred and not recovered from any other public or private source, and

(ii) a group medical benefits insurance policy providing the reasonable costs of sound medical and surgical treat-

ment and hospitalization resulting from such disease or injury (which according to health assessments or other health studies under section 104(i), is associated with exposure to a hazardous substance in a release in the geographical area). Such a policy shall be subject to an annual deductible of $500, with no copayment requirement or annual or lifetime limitation on expenditures other than those referred to in paragraph (3).

(D) Such policies provided under subparagraphs (B) and (C) shall be secondary to, and provide for nonduplication of benefits with, any other policy or coverage, public or private, for which such individual is eligible. The benefits or coverage of such other policy shall be those determined to be in force as of thirty days prior to the date the State applies for area designation.

(E) Assistance under this subsection shall be provided on the condition that the costs thereof in connection with any individual pursuing a claim against a potentially responsible party shall be repaid to the Fund out of the proceeds of any award (including punitive damages) or settlement of such claim.

(6)(A) The President, with the assistance of the Agency for Toxic Substances and Disease Registry, beginning January 1, 1987, shall submit annual reports to the Congress on the implementation and effectiveness of this victim assistance demonstration program, including an evaluation of the effectiveness of each of the State programs established under the subsection. The final report shall also address the relationship of this demonstration program to other public and private mechanisms that may exist to carry out the same or similar functions.

(B) Each State selected to operate a demonstration program under this subsection shall submit to the President and the Congress, not later than January 1, 1990, a report on the implementation and effectiveness of its program.

(n) For fiscal year 1986 and for each fiscal year thereafter, not less than 5 per centum of all sums appropriated from the Trust Fund or $50,000,000, whichever is less, shall be directly available to the Agency for Toxic Substances and Disease Registry and used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i), including any such activities related to hazardous waste stored, treated, or disposed of at a facility having a permit under section 3005 of the Solid Waste Disposal Act. Any funds so made available which are not committed by the beginning of the fourth quarter of the fiscal year in which made available shall be made available in the Trust Fund for other purposes.

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CLAIMS PROCEDURE

SEC. 112. (a) * * *

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[(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.]

[(e)] *(d)* Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURISDICTION AND VENUE

[Sec. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.]

Sec. 113. (a)(1) Review of any regulation promulgated under this Act may be had upon application by any interested person in the Circuit Court of Appeals of the United States for the District of Columbia or in any United States court of appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation. Any such application shall be made within one hundred and twenty days from the date of promulgation of such regulation, or after such date only if such application is based solely on grounds which arose after such one hundred and twentieth day. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

"(2)(A) If applications for review of the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of the first such application more than thirty days before receiving written notice of the filing of the second application, then the record shall be filed in that court in which the first application was filed. If applications for review of the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the President shall promptly advise in writing the

Administrative Office of the United States courts that applications have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the President, the Administrative Office thereupon shall select the court in which the record shall be filed from among those identified by the President. Upon notification of such selection, the President shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the President, the record shall be filed in the United States court of appeals which remanded such action.

(B) Where applications have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

(C) Any court in which an application with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such application to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.

(b) Except as provided in [subsection] *subsections* (a) *and (f)* of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(e)(1) No claim may be presented, nor may any action be commenced under this title—

(A) for the cost of response, unless that claim is presented or action commenced within six years after the date of completion of the response action: Provided, however, That within the limitation period set out herein a State or the United States may commence an action under this title for recovery of any cost or costs at any time after such cost or costs have been incurred;

(B) for damages under subparagraph (C) of section 107(a), unless that claim is presented or action commenced within six years after the date on which final regulations are promulgated under section 301(c) or within three years after the date of the discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later; or

(C) for any other damages, unless that claim is presented or action commenced within three years after the date of discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later: Provided, however, That the time limitations contained in this paragraph shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him nor against an Indian tribe until the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this subsection. No claim may be presented or action be commenced under this subparagraph for any damages, if prior to the date of enactment of the Superfund Improvement Act of 1985, the statute of limitations which would otherwise apply under this paragraph has expired.

(2) No action for contribution may be commenced under section 107 more than three years after the date of entry of judgment or the date of the good-faith settlement.

(3) No action based on rights subrogated pursuant to section 112 by reason of payment of a claim may be commenced under this title more than three years after the date of payment of such claim.

(f) No court shall have jurisdiction to review any challenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a), in any action other than (1) an action under section 107 to recover response costs or damages or for contribution or indemnification; (2) an action to enforce an order issued under sections 104 or 106(a) or to recover a penalty for violation of such order; or (3) an action for reimbursement under section 106(b)(2).

(g) In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. The only objection which may be raised in any such judicial action under section 106 or 107 is an objection to the response action which was raised with reasonable specificity to the President during the applicable period for public comment. In considering such objections, the court shall uphold the President's decision in selecting the response action unless the decision was arbitrary and capricious or otherwise not in accordance with law. If the court finds that the President's decision in selecting the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan. In reviewing alleged procedural errors, the

court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(h) In any action by the United States under section 104, 106, or 107, process may be served in any district where the defendant is found, or resides, or transacts business, or has appointed an agent for the service of process.

* * * * * * *

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) * * *

* * * * * * *

[(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.**]**

[(d)**]** *(c)* Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title**[**.**]** *: Provided, That with respect to a Federal facility or activity for which such duties or powers are delegated to an officer, employee or representative of the department, agency or instrumentality which owns or operates such facility or conducts such activity, the concurrence of the Administrator (and the responsible State official where a cooperative agreement has been entered into) shall be required for the selection of appropriate remedial action and the administrative order authorities of section 106(a) are hereby delegated to the Administrator.*

INDIAN TRIBES

SEC. 116. The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding cooperation in establishing and maintaining national registries), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).

FEDERAL FACILITIES

SEC. 117. (a) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket which shall contain all information submitted under section 3016 of the Solid Waste Disposal Act regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility. Such docket shall be available for public inspection at reasonable times. Three months after establishment of the docket and every three months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding three-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

(b) ASSESSMENT AND EVALUATION.—Not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility for which information is required under section 3016 of the Solid Waste Disposal Act. Following such preliminary assessment, the Administrator shall where appropriate—

(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases.

(2) include such facilities on the National Priorities List maintained under such plan. Such evaluation and listing shall be completed not later than twenty months after such date of enactment.

(c) RIFS AND INTERAGENCY AGREEMENT.—

(1) RIFS.—Within one year after the inclusion of any facility on the National Priority List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study for such facility.

(2) INTERAGENCY AGREEMENT.—(A) Within six months after completion of each such remedial investigation and feasibility study, the Administrator shall review the results of such inves-

tigation and study and shall enter into an interagency agreement with the head of the department, agency, or instrumentality concerned for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. All such intergency agreements shall comply with the public participation requirements of section 104(j). Such agreement shall require that substantial continuous physical onsite remedial action is commenced at each facility which is the subject of such an agreement within twelve months after the agreement is entered into.

(B) Each interagency agreement under this paragraph shall include, but shall not be limited to—

(i) a review of alternative remedial actions and selection of construction design by the Administrator;

(ii) a schedule for the completion of each such remedial action; and

(iii) arrangements for long term operation and maintenance of the facility.

(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable from the date the interagency agreement was entered into. Each agency shall include in its annual budget submissions to the Congress a request for funding adequate to complete remedial action, and a review of alternative agency funding which could be used to provide for the costs of remedial action. The request shall also include a statement of the hazard posed by the facility to human health, welfare and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to—

(A) a report on the progress in reaching interagency agreements under this section;

(B) the specific cost estimates and budgetary proposals involved in each interagency agreement;

(C) a brief summary of the public comments regarding each proposed interagency agreement; and

(D) a description of the instances in which no agreement was reached.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached.

(d) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by Executive order of the President or otherwise, to any other office or employee of the United States or to any other person.

(e) Application of Requirements to Federal Facilities.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priority List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned and operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities, except for any requirements relating to bonding, insurance, or financial responsibility. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

CITIZEN SUITS

Sec. 118. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on such person's behalf—

(1) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment to the Constitution, who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

(2) against the President for failure to perform any act or duty under this Act which is not discretionary with the President.

Any action under this subsection shall be brought in the district court for the district in which the alleged violation occurred. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such requirement, to order the President to perform such act or duty, as the case may be, or to order such person in violation, of any standard, regulation, condition, requirement, or order to take such action as may be necessary to correct the violation or to apply appropriate civil penalties under this Act: Provided, however, That no district court shall have jurisdiction under this section to review any challenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a).

(b) No action may be commenced under subsection (a) of this section (1) prior to ninety days after the plaintiff has given notice of the violation or disposal (A) to the President; or (B) to the State in which the alleged violation or disposal occurs; and (C) to any alleged violator of a standard, regulation, condition, requirement, or order; or (2) if the President or State has commenced and is diligently prosecuting an action under this Act or the Solid Waste Disposal Act to require compliance with such standard, regulation, condition, requirement, or order.

(c) In any action commenced by the President or a State, under this Act or under the Solid Waste Disposal Act, in a court of the

United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and such applicant is so situated that the disposition of the action may, as a practical matter, impair or impede such applicant's ability to protect that interest, unless the President or the State shows that the applicant's interest is adequately represented by existing parties.

(d) In any action under this section, the United States or the State may intervene as a matter of right.

(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief (including relief against the President or a State agency).

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

* * * * * * *

Subtitle A—Imposition of Taxes on Petroleum and Certain Chemicals

* * * * * * *

"Subchapter B—Tax on Certain Chemicals

* * * * * * *

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) Definitions.—For purposes of this subchapter—

* * * * * * *

"(b) Exceptions; Other Special Rules.—For purposes of this subchapter—

"(1) Methane or butane used as a fuel.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(2) Substances used in the production of fertilizer.—

"(A) In general.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified substance, no tax shall be imposed under section 4661(a).

"(B) Qualified substance.—For purposes of this section, the term 'qualified substance' means any substance—

"(i) used in a qualified use by the manufacturer, producer, or importer,

"(ii) sold for use by the purchaser in a qualified use, or

"(iii) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(C) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

"(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance to the extent derived from coal.

"(5) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, phosphoric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

* * * * * * *

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

"(B) any person uses such substance, or sells such substance for use, as a qualified substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(3) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, phosphoric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(5), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.".

* * * * * * *

Subtitle B—Establishment of Hazardous Substance Response Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Response Trust Fund" (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund. **[**as provided in this section**]**

(b) TRANSFERS TO RESPONSE TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(D) penalties assessed under title I of this Act, and

(E) punitive damages under section 107(c)(8) of this Act.

[(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—

[(A) 1981, $44,000,000,
[(B) 1982, $44,000,000,
[(C) 1983, $44,000,000,
[(D) 1984, $44,000,000, and
[(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

[(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

[(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

[(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.]

[(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

[(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

[(A) response costs,

[(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

[(C) claims for injury to, or destruction or loss of, natural resources, and

[(D) related costs described in section 111(c) of this Act.

[(2) LIMITATIONS ON EXPENDITURES.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) and (2) shall be reserved—

[(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).]

* * * * * * *

EXPIRATION, SUNSET PROVISION

[SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the ter-

mination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 303. (a) The authority to collect taxes under chapter 38 of the Internal Revenue Code of 1954, together with the sums authorized to be appropriated under subsection (b), shall total $7,500,000,000 during the five-fiscal-year period beginning October 1, 1985.

(b) There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund for fiscal year—

(A) 1981, $44,000,000,
(B) 1982, $44,000,000,
(C) 1983, $44,000,000,
(D) 1984, $44,000,000,
(E) 1985, $44,000,000,
(F) 1986, $206,000,000,
(G) 1987, $206,000,000,
(H) 1988, $206,000,000,
(I) 1989, $206,000,000, and
(J) 1990, $206,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A) through (I) as has not been appropriated before the beginning of the fiscal year involved.".

(b) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

(1) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

(2) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof of this Act) as in effect on the date of the enactment of the Superfund Improvement Act of 1985, including—

(A) response costs,

(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

(C) claims for injury to, or destruction or loss of, natural resources, and

(D) related costs described in section 111(c) of this Act.

(2) LIMITATIONS ON EXPENDITURES.—*At least 85 per centum of the amounts appropriated to the Response Trust Fund shall be reserved—*

(A) for the purposes specifed in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

[JOINT COMMITTEE PRINT]

BACKGROUND AND ISSUES RELATING TO THE REAUTHORIZATION AND FINANCING OF THE SUPERFUND

Scheduled for Hearings

before the

COMMITTEE ON FINANCE

ON APRIL 25 AND 26, 1985

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

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CONTENTS

Page

INTRODUCTION 1

I. SUMMARY 2
  A. Present Law 2
  B. S. 51 as Reported by the Committee on Environment and Public Works 3
  C. Administration Proposal (S. 494 and S. 972) 3
  D. Other Senate Bills Relating to Financing of Superfund 4

II. PRESENT LAW 8
  A. Tax Provisions 8
    1. Hazardous substance response taxes and trust fund 8
    2. Post-closure liability tax and trust fund 13
  B. Non-tax Provisions 14
    1. General provisions 14
    2. Liability provisions 16
    3. Related statutes 16

III. OPERATION OF SUPERFUND PROGRAM UNDER PRESENT LAW 18
  A. Superfund Program Activities 18
  B. Hazardous Substance Response Trust Fund 19

IV. SUMMARY OF S. 51, AS REPORTED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS 24

V. DESCRIPTION OF ADMINISTRATION PROPOSAL (S. 494 and S. 972) 26
  A. Overview 26
  B. Hazardous Substance Superfund 26
  C. Tax Provisions 27
    1. Taxes on petroleum and feedstock chemicals 27
    2. Waste management tax 27
  D. Repeal of Post-closure Liability Tax and Trust Fund 30
  E. Non-tax Provisions Affecting the Hazardous Substance Superfund 30

VI. OTHER SENATE BILLS RELATING TO FINANCING OF SUPERFUND 32
  A. S. 14 (Sens. Moynihan and Bentsen) 32
  B. Revenue Amendment to S. 51 (Sen. Stafford) 35
  C. S. 596 (Sen. Bradley) 43
  D. S. 886 (Sen. Proxmire) 44
  E. S. 955 (Sens. Mitchell and Chafee) 49
  F. S. 957 (Sens. Bentsen and Wallop) 52

Page
VII. ISSUES RELATING TO THE REAUTHORIZATION OF SUPERFUND ... 55
  A. Funding Level of the Superfund Program ... 55
  B. General Revenue Share of Superfund Expenditures ... 56
  C. Chemical Feedstock Tax ... 57
  D. Effect of Feedstock Tax on Trade ... 58
  E. Tax on Hazardous Waste ... 59
  F. Post-closure Liability Trust Fund ... 65
  G. Natural Resource Damage Claims ... 66
  H. Broad-base Tax Alternatives ... 67

INTRODUCTION

The Committee on Finance has scheduled public hearings on the reauthorization of the Hazardous Substance Response Trust Fund ("Superfund") on April 25 and 26, 1985. This Fund is provided for under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the tax provisions of which are scheduled to expire after September 30, 1985.

The first part of the pamphlet [1] is a summary. The second part discusses the tax and other provisions of present law. The third part reviews the operation of the current Superfund program. Part four summarizes the provisions of S. 51 (The Superfund Improvement Act of 1985) as reported by the Senate Committee on Environment and Public Works on March 7, 1985 (report filed on March 18, 1985, S. Rep. No. 99-11). S. 51 extends and expands the Superfund program authorization statute. (On April 15, 1985, S. 51 was sequentially referred to the Committee on Finance for the purpose of considering title II of the bill and any provisions relating to revenues for the Hazardous Substance Response Trust Fund.) Part five summarizes the Administration's Superfund reauthorization proposal, which was introduced, by request, as S. 494 (nonrevenue aspects) and S. 972 (revenue aspects). Part six summarizes the other Senate bills, introduced thus far in the 99th Congress, relating to financing of the Superfund. Part seven analyzes the issues relating to the reauthorization and financing of the Superfund.

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[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Background and Issues Relating to the Reauthorization and Financing of the Superfund* (JCS-11-85), April 24, 1985.

I. SUMMARY

A. Present Law

Hazardous Substance Response Trust Fund

Under present law, excise taxes are imposed on crude oil and certain chemicals, and revenues equivalent to these taxes are deposited into the Hazardous Substance Response Trust Fund ("Superfund"). These amounts are available for expenditures incurred in connection with releases or threatened releases of hazardous substances and pollutants or contaminants into the environment. These provisions were enacted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), which established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous spills and uncontrolled hazardous waste sites.

A crude oil tax of 0.79 cent per barrel is imposed on the receipt of crude oil at a U.S. refinery, the import of crude oil and petroleum products, and the use or export of domestically produced crude oil (if the tax has not already been paid).

An excise tax on chemicals is imposed on the sale or use of 42 specified organic and inorganic substances if they are produced in or imported into the United States. The taxable chemicals generally are chemicals that are hazardous or chemicals which may create hazardous products or wastes when used. The rates vary from 22 cents per ton to $4.87 per ton. (See Table 1 for a list of current law tax rates on chemical feedstocks.)

The taxes generally will terminate after September 30, 1985. However, the taxes would have been suspended during calendar years 1984 or 1985, if, on September 30, 1983, or 1984, respectively, the unobligated trust fund balance were to exceed $900 million, and if the unobilgated balance on the following September 30 would exceed $500 million, even if these excise taxes were to be suspended for the calendar year in question. Further, the authority to collect taxes would otherwise terminate when cumulative receipts from these taxes reach $1.38 billion. (Cumulative revenues from these excise taxes through September 30, 1984, amounted to $0.863 billion.)

Post-closure Liability Trust Fund

Effective after September 30, 1983, an excise tax of $2.13 per dry weight ton is imposed on hazardous waste which is received at a qualified hazardous waste disposal facility and which will remain at the facility after its closure. These tax receipts are deposited into the Post-closure Liability Trust Fund. This trust fund is to assume completely the liability, under any law, of owners and operators of closed hazardous waste disposal facilities which meet certain conditions. No liabilities have yet been assumed by the Trust Fund. These provisions were enacted in CERCLA.

Authority to collect the tax would be suspended for any calendar year after 1984, if the unobligated balance in the Trust Fund exceeded $200 million on the preceding September 30. Further, authority to collect the tax will terminate when cumulative receipts from the crude oil and chemical excise taxes described above reach $1.38 billion, or, if earlier, after September 30, 1985.

B. S. 51 As Reported by the Committee on Environment and Public Works

S. 51, as reported by the Committee on Environment and Public Works, extends the Superfund for five years (through September 30, 1990) at an aggregate funding level of $7.5 billion.

C. Administration Proposal (S. 494 and S. 972) [2]

Tax provisions

The Administration proposal would extend the Superfund through September 30, 1990, and provide a projected $4.5 billion in tax revenues ($5.3 billion including interest and recoveries) to the Fund during the extension period. These revenues would be derived primarily from the following sources:

(1) A five-year extension of the taxes on petroleum and feedstock chemicals, at their present law rates. These taxes would generally expire after September 30, 1990; however, a special rule would provide for earlier suspension or termination of the taxes if the unobligated Superfund balance exceeds $1.5 billion. There is also a trust fund provision under which authority to collect the petroleum, feedstock chemical, and waste management taxes would expire when and if cumulative Superfund receipts after September 30, 1985 (i.e., during the reauthorization period) total $5.3 billion.

(2) A tax on the treatment, storage,[3] disposal (including ocean disposal), or export of hazardous wastes ("waste management" tax), effective October 1, 1985. This tax would be imposed at two distinct rates: (1) a higher rate ($9.80 per ton in fiscal 1986, phasing up to $16.32 in fiscal 1990) for hazardous waste received at a landfill surface impoundment, waste pile, or land treatment unit,[4] and (2) a lower rate ($2.61 per ton in 1986, phasing up to $4.37 per ton in 1990) for ocean disposal, export, or hazardous waste received at a facility other than those listed above (e.g., at a deep well injection facility). These rates would further be adjusted to compensate for shortfalls from overall Superfund revenue targets. Exemptions would be provided for certain hazardous waste disposals pursuant to removal or remedial actions under CERCLA, and for certain waste generated at Federal facilities; however, no general exemption would be provided for the treatment of hazardous wastes. The

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[2] Nonrevenue aspects of the Administration proposal were introduced by Sen. Stafford at the request of the Administration, as S. 494. The revenue aspects were separately introduced as S. 972.

[3] On-site storage of 90 days or less is exempt, but all off-site storage is taxable.

[4] These and other terms generally would be defined by reference to Title II of the Solid Waste Disposal Act, as amended ("SWDA"), also known as the Resource Conservation and Recovery Act ("RCRA").

waste management tax would be intended to raise approximately two-thirds of the total Superfund tax revenues under the Administration proposal.

The Administration proposal would repeal the present law Post-closure Liability Trust Fund and the associated waste disposal tax (Code secs. 4681 and 4682), effective October 1, 1985. Amounts in the fund at that time would be transferred to the Superfund.

Trust fund provisions

Under the Administration proposal, the substantive trust fund provisions would generally be equivalent to present law. However, the proposal would delete natural resource damage claims (section 111(b) of present law CERCLA) as a permitted Superfund expenditure purpose.

D. Other Senate Bills Relating to Financing of Superfund

S. 14 (Sens. Moynihan and Bentsen)—"Hazardous Substance Response Act of 1985"

This bill would impose a waste end tax designed to raise approximately $1.5 billion for the Superfund over a 5-year period. This tax would be intended as a partial, rather than an exclusive, source of revenues for the Superfund.

The tax under S. 14 would be imposed on the disposal or long-term storage of hazardous waste (as defined under RCRA). The tax would be imposed at four different rates: (1) a $45 per ton rate for hazardous waste disposed of by landfill, in waste piles, or by surface impoundment (as defined under RCRA); (2) a $25 per ton rate for ocean dumping or land treatment; (3) a $5 per ton rate for hazardous waste disposed of by underground injection; and (4) a $45 per ton rate for long-term storage of hazardous waste. A taxpayer who could establish the water content of any hazardous waste could pay an alternate $50 per ton on the "dry weight" of such waste. No tax would be imposed under the bill on the treatment or reclamation of hazardous waste as defined by the bill. Exemptions also would be provided for (1) surface impoundments containing treated waste water as part of a biological treatment facility, and (2) certain disposals or long-term storage of hazardous waste pursuant to CERCLA provisions.

The tax under S. 14 would be effective on January 1, 1986, and would expire on September 30, 1990. The Treasury Department (in consultation with EPA) would be required to report to Congress by January 1, 1987, and annually thereafter, concerning the revenues being collected by the tax and Treasury's recommendations for changes (if any) in the tax.

Revenue Amendment to S. 51 (Sen. Stafford)

S. 51 itself does not contain a revenue title; however, a proposed amendment to S. 51, introduced by Senator Stafford, is intended to raise $7.5 billion over a five-year period, using the following revenue sources:

(1) An increased tax rate of 4.5 cents per barrel on crude oil (the present law rate is 0.79 cents per barrel).

(2) An expanded tax on chemical feedstocks, including new taxable substances and increased rates on substances presently subject to tax.[5] The tax rates would be indexed for inflation by reference to the producer price index for organic or inorganic chemicals (as appropriate) and there would be exemptions for exported chemicals and substances used to produce animal feed (in addition to the present law exemptions). The Treasury Department and the International Trade Commission would be directed to report to Congress on the feasibility of a tax on imported chemical derivatives, as a supplement to the feedstocks tax.

The expanded feedstocks and petroleum taxes would generally be effective from January 1, 1985, through September 30, 1990. These taxes would terminate earlier than September 30, 1990, on any date on which the Treasury Department, in a manner to be prescribed by regulations, determines that the sum of amounts received by reason of the petroleum, feedstock chemical, waste end and corporate net receipts taxes (proposed by the amendment) will equal $6.47 billion.

(3) An "environmental toxics" tax on (a) the disposal (or long-term storage) of hazardous waste at a RCRA facility, or (b) any other release of a hazardous substance (using the broader CERCLA definition) into the atmosphere. The tax would be imposed at three rates: (1) a $150 per ton rate for land disposal (including landfills, surface impoundments, or waste piles); (2) a $75 per ton rate on Federally permitted releases of hazardous substances; and (3) a $150 per ton rate on other hazardous substance releases. If the owner or operator of a facility can establish the water content of a hazardous waste or substance, the owner or operator could elect to pay a tax (at the general rates) on a "dry-weight" basis. Exclusions from the disposal tax would be provided for certain disposals and removals under CERCLA.

The environmental toxics tax generally would be effective from the date of enactment through September 30, 1990. The Treasury would be directed to report to Congress concerning the amount of revenues being collected and its recommendations (if any) for improving the tax.

(4) A .014 percent tax on corporate net receipts in excess of $75,000,000. Net receipts would equal gross receipts minus the cost of goods sold by the taxpayer during the taxable year. This tax would be effective on January 1, 1986.

The trust fund provisions of S. 51 (included in the reported bill) would also authorize general revenue appropriations to the Superfund of $44 million per year for fiscal years 1986 through 1990, while retaining the present law expenditure purposes. The bill would further terminate the authority to collect all Superfund taxes when and if cumulative Superfund revenues during the reauthorization period (not including interest and recoveries) total $7.5 billion.

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[5] The taxable substances and applicable tax rates are included as table 8 in the explanation of this amendment.

S. 596 (Sen. Bradley)—"Superfund Extension and Improvement Act of 1985"

This bill would raise $7.5 billion for the Superfund over a five-year period, using three primary tax revenue sources:

(1) A five-year extension of the taxes on petroleum and feedstock chemicals (Code secs. 4611 and 4661), at their present law rates. These taxes would terminate on September 30, 1990; however, these taxes (together with the other Superfund taxes) would expire earlier if Treasury reasonably estimates that cumulative Superfund revenues (not including interest and recoveries) will equal or exceed $7.5 billion.

(2) A waste end tax identical to that included in S. 14, introduced by Senators Moynihan and Bentsen (discussed above).

(3) A tax on the net receipts of any corporation which has gross receipts in excess of $50,000,000 for any taxable year. This tax would be imposed at a rate of 0.083 percent of taxable net receipts, defined as the excess (if any) of gross receipts over the costs of goods sold by the taxpayer for the taxable year. The method for determining cost of goods sold would be established by Treasury regulations. This tax would be effective for taxable years beginning on or after January 1, 1986.

The bill (S. 596) would also allocate $44 million per year to the Superfund from general revenues (i.e., the present law level of appropriations) for fiscal years 1986 through 1990. S. 596 also includes trust fund and other nonrevenue provisions which are the same as S. 51, as reported by the Committee on Environment and Public Works. The bill further includes a specific cleanup schedule for Superfund sites.

S. 886 (Sen. Proxmire)—"Hazardous Waste Reduction Act of 1985"

This bill would impose a tax on all forms of land and ocean disposal of hazardous waste which are regulated by RCRA, as well as on exports of hazardous waste and other unregulated placements of hazardous waste (subject to certain exceptions). The tax would be imposed at a rate of $20 per ton on exports, unregulated placements, and all storage and disposal methods other than underground injection wells, which would be taxed at a $5 per ton rate. Hazardous waste rendered nonhazardous within one year of receipt at a treatment, storage, or disposal facility would receive a full credit against the tax. Further, separate exemptions would be provided for qualified wastewater treatment facilities; certain removal or remedial actions under CERCLA; and movement of waste from interim status facilities being closed by EPA under RCRA. The tax is intended to raise $286 million per year, as part of a comprehensive Superfund funding package. Tax rates would be increased for any fiscal year during which Treasury estimated that this target would not be met.

The tax under S. 886 would be effective from January 1, 1986, through September 30, 1990. The Treasury Department would be required to submit a report to Congress, by April 1, 1986, on the progress being made in implementing the tax, and a further report (by January 1, 1987) including recommendations (if any) for improving the tax.

S. 955 (Sens. Mitchell and Chafee)—"Superfund Revenue Act of 1985"

This bill is intended to raise $7.5 billion over a five-year period (not including interest and recoveries), from the following revenue sources:

[illegible]) An increased tax rate of 1.13 cents per barrel on crude oil.

(2) A tax rate on the same chemical feestocks that are taxed under present law, with increased rates on certain substances.[6] These tax rates would be indexed for inflation by reference to the producer price index for organic and inorganic chemicals (as appropriate), beginning in 1986.

The expanded feedstocks and petroleum taxes would be effective from October 1, 1985, through September 30, 1990.

(3) A tax on the treatment, storage, disposal, or export of hazardous waste. This tax would be imposed at a flat rate of $3.65 per metric ton, to be adjusted for inflation beginning in 1986. In the case of on-site waste water treatment facilities, the taxpayer could elect to pay tax only on the amount of hazardous waste generated rather than the amount of diluted waste actually treated.

This tax would be effective from October 1, 1985, through September 30, 1990.

(4) An 0.3-percent tax on corporate earnings and profits in excess of $5,000,000. The tax would be imposed on all corporations other than S corporations, RICs, and REITs. The tax would be effective for taxable years ending after September 30, 1985, and on or before September 30, 1990; for taxable years straddling October 1, 1985, the tax would be imposed on a proportional basis only.

The bill also authorizes general revenue appropriations of $187.5 million per year to the Superfund for fiscal years 1986–1990.

S. 957 (Sens. Bentsen and Wallop)—"Superfund Excise Tax Act of 1985"

This bill would impose a tax on the sale, lease, or import of tangible personal property by the manufacturer or importer of the property, the revenues from the tax to be allocated to the Superfund. The tax would be limited to manufacturers or importers having $100,000 or more of annual gross receipts from manufacturing. A credit against the tax would be allowed for direct material purchases during the taxable year (i.e., the tax would be similar to a value added tax). Exports of taxable goods and sales (or imports) by governmental units and tax-exempt entities would be exempt from the tax.

The rate of tax is not specified by the bill; this rate would be determined depending upon the amount of revenue necessary (together with any other taxes) in order to finance the Superfund in any fiscal year.

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[6] The taxable substances and applicable tax rates are included as Table 9 in the explanation of this bill.

II. PRESENT LAW

A. Tax Provisions

1. Hazardous substance response taxes and trust fund

Hazardous Substance Response Trust Fund

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (P.L. 96-510) established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous substance spills and uncontrolled hazardous waste sites.

The Hazardous Substance Response Trust Fund ("Superfund") was established by CERCLA as a trust fund in the Treasury of the United States. Amounts in the Superfund are available for expenditures incurred under section 111 of CERCLA (as enacted) in connection with releases or threats of releases of hazardous substances into the environment. Allowable costs include (1) costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action, (2) payment of claims for injury to, or destruction or loss of, natural resources belonging to or controlled by the Federal or State governments, and (3) certain costs related to response, including damage assessment, epidemiologic studies, and maintenance of emergency response forces.[7]

Under CERCLA, there are appropriated to the Superfund: (1) amounts equivalent to amounts received in the Treasury under Internal Revenue Code sections 4611 (pertaining to the petroleum tax) and 4661 (pertaining to the tax on certain feedstock chemicals); (2) amounts recovered from responsible parties on behalf of the Superfund under CERCLA; (3) penalties assessed under title I of CERCLA; and (4) punitive damages under section 107(c)(8) of CERCLA (pertaining to damages for failure to provide removal or remedial action upon order of the President). The petroleum and feedstock chemicals taxes are scheduled to expire after September 30, 1985.

In addition to these amounts, CERCLA authorizes general revenue appropriations to the Superfund of $44 million per year for fiscal years 1981 through 1985 (i.e., an aggregate of $220 million) and, for 1985, an additional amount equal to so much of the aggregate authorized to be appropriated for 1981 through 1984 as has not been appropriated before October 1, 1984.

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[7] The Fund also may be used for payment of claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act. All moneys recovered under section 311(b)(6)(B) of the Clean Water Act are appropriated to the Superfund. These claims and moneys involve certain costs arising before the date of enactment of CERCLA.

Not more than 15 percent of the Superfund receipts attributable to taxes and general revenue appropriations may be used for the payment of natural resource damage claims. CERCLA further provides that claims against the Superfund may be paid only out of the Fund. If, at any time, claims against the Fund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they were finally determined.

The Superfund has authority to borrow for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the succeeding 12 months; advances for paying natural resource damage claims may not exceed 15 percent of such revenues. All advances must be repaid by September 30, 1985.

The Superfund is managed by the Secretary of the Treasury, who is required to report annually to Congress on the financial condition and operations of the Fund.

Petroleum tax

Present law (sec. 4611 of the Code) imposes an excise tax (the "petroleum tax") of 0.79 cent per barrel on domestic crude oil and on petroleum products (including crude oil) entering the United States for consumption, use, or warehousing. The tax on domestic crude oil is imposed on the operator of any United States refinery receiving such crude oil, while tax on imported petroleum products is imposed on the person entering the product into the United States for consumption, use, or warehousing. If crude oil is used in, or exported from, the United States before imposition of the petroleum tax, the tax is imposed on the user or exporter of the oil.

Domestic crude oil subject to tax includes crude oil condensate and natural gasoline, but not other natural gas liquids. Taxable crude oil does not include oil used for extraction purposes on the premises from which it was produced, such as for powerhouse fuel or for reinjection as part of a tertiary recovery process. In addition, the term crude oil does not include synthetic petroleum (e.g., shale oil, liquids from coal, tar sands, biomass, or refined oil).

Petroleum products which are subject to tax upon being entered into the United States include crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form. For purposes of determining whether crude oil or petroleum products (and chemicals subject to the feedstock tax) have been produced in, entered into, or exported from the United States, the term United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any possession of the United States. The United States also includes the Outer Continental Shelf areas and foreign trade zones located within the United States. There is no exception for bonded petroleum products. Revenues from the petroleum tax are not paid to Puerto Rico or the Virgin Islands under the cover over provisions of section 7652 of the Code.

Present law specifies that the petroleum tax is to be imposed only once with respect to any petroleum product. Thus, anyone who is otherwise liable for the tax may avoid payment by establishing that the tax already has been imposed with respect to that product.

Amounts equivalent to the revenues from the petroleum tax are deposited in the Superfund.

The petroleum tax is scheduled to expire under present law after September 30, 1985. Present law also contains provisions which would have temporarily triggered-off the tax had revenues accumulated faster than a specified rate. If on September 30, 1983, or September 30, 1984, (1) the unobligated balance in the Superfund had exceeded $900 million, and (2) the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, had determined that such unobligated balance would exceed $500 million on September 30 of the following year (if no tax was imposed under section 4611 or section 4661 of the Code during the calendar year following the first date referred to above), then no tax would have been imposed during the first calendar year beginning after the first date referred to above. (As of September 30, 1984, the unobligated balance in the Superfund was $227 million.) Further, the authority to collect the tax terminates should cumulative receipts from the petroleum and chemical taxes reach $1.38 billion (sec. 303 of CERCLA). (As of September 30, 1984, cumulative receipts from these taxes amounted to $0.863 billion.)

Tax on feedstock chemicals

Present law (sec. 4661 of the Code) imposes an excise tax on the sale or use of 42 specified chemical substances ("feedstock chemicals") by the manufacturer, producer, or importer thereof. These chemicals generally are hazardous substances or may create hazardous products or wastes when used. The tax is imposed on feedstock chemicals manufactured in the United States or entered into the United States for consumption, use, or warehousing. The tax rates are specified per ton of taxable chemical, and vary from 22 cents to $4.87 per ton. In the case of a taxable chemical which is a gas (e.g., methane), the tax is imposed on the number of cubic feet of such gas which is equivalent to 2,000 pounds on the basis of molecular weight. (See Table 1 for a list of taxable chemicals and applicable tax rates under present law.)

Table 1.—Present Law Excise Tax on Chemicals

[Dollars per ton]

Chemical	Tax rate
Organic substances:	
Acetylene	4.87
Benzene	4.87
Butadiene	4.87
Butane	4.87
Butylene	4.87
Ethylene	4.87
Methane	3.44
Napthalene	4.87

Table 1.—Present Law Excise Tax on Chemicals—Continued

[Dollars per ton]

Chemical	Tax rate
Propylene	4.87
Toluene	4.87
Xylene	4.87
Inorganic substances:	
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromite	1.52
Chromium	4.45
Cobalt	4.45
Cupric Oxide	3.59
Cupric sulfate	1.87
Cuprous oxide	3.97
Hydrochloric acid	.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Nitric acid	.24
Phosphorus	4.45
Potassium dichromate	1.69
Potassium hydroxide	.22
Sodium dichromate	1.87
Sodium hydroxide	.28
Stannic chloride	2.12
Stannous chloride	2.85
Sulfuric acid	.26
Zinc chloride	2.22
Zinc sulfate	1.90

The rates on petroleum and chemical feedstocks were set to achieve a $1.6 billion Superfund program over five years, and to allocate 65 percent of the tax burden to petrochemicals, 20 percent to inorganic chemicals, and 15 percent to petroleum. This allocation was based on the respective proportions of wastes (derived from these chemicals) found in hazardous waste sites (based on data available in 1980). In addition, the feedstock chemical tax rates were limited to 2 percent of wholesale price (based on data available in 1980).

Present law provides six exemptions from the tax on feedstock chemicals. Four of these exemptions were provided in CERCLA as enacted in 1980, and two exemptions were added by the Tax Reform Act of 1984. First, in the case of butane and methane, the tax is not imposed if those substance are used as a fuel. (If those substances are used other than as a fuel, for purposes of the tax, the person so using them is treated as the manufacturer.) A second exemption is provided for nitric acid, sulfuric acid and ammonia (and methane used to produce ammonia) used in the manufacture or production of fertilizer or directly applied as fertilizer. Third, present law provides an exemption for sulfuric acid produced solely as a byproduct of (and on the same site as) air pollution control equipment. Fourth, any substance is exempt to the extent it is derived from coal.

The Tax Reform Act of 1984 (P.L. 98-369) added two further exemptions to the tax on feedstock chemicals. First, the 1984 Act provided an exemption for petrochemicals otherwise subject to the tax (i.e., acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphtalene, propylene, toluene, and xylene) which are used for the manufacture or production of motor fuel, diesel fuel, aviation fuel, or jet fuel. (The petroleum tax continues to apply to domestic crude oil or imported petroleum products used for these purposes.) This exception applies if the otherwise taxable substance is (1) added to a qualified fuel, (2) used to produce another substance that is added to a qualified fuel, or (3) sold for either of the uses described in (1) or (2) above. Second, the 1984 Act provided that the transitory existence of cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide during a metal refining process is not subject to tax if the compound exists in the process of converting or refining non-taxable metal ores or compounds into other (or more pure) non-taxable compounds. (If a substance is removed in the refining process, tax is imposed even if the substance is later reintroduced to the refining process.) These provisions were effective as if enacted as part of CERCLA.

Under present law, if a taxpayer uses a taxable chemical prior to any sale, the tax is imposed as if the chemical had been sold. When a taxable chemical is used to manufacture or produce a second taxable chemical, an amount equal to the tax paid on the first chemical is allowed as a credit or refund (without interest) to the manufacturer or producer of the second chemical (but not in an amount exceeding the tax imposed on the second chemical). Thus, the imposition of tax more than once on the same substance is avoided.

Amounts equivalent to the revenues from the tax on feedstock chemicals are deposited in the Superfund.

The tax on feedstock chemicals is scheduled to expire, together with the petroleum tax, after September 30, 1985, with a provision for earlier termination if the unobligated balance in the Superfund had exceeded $900 million. Further, the authority to collect the tax terminates should cumulative receipts from the petroleum and chemical taxes reach $1.38 billion (sec. 303 of CERCLA).[8]

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[8] These termination provisions are explained in greater detail in the previous section on the petroleum tax.

2. Post-closure liability tax and trust fund

Post-closure Liability Trust Fund

In addition to the Superfund, CERCLA established the Post-closure Liability Trust Fund in the United States Treasury. The Post-closure Liability Trust Fund is to assume completely the liability, under any law (including the liability provisions of CERCLA), of owners and operators of hazardous waste disposal facilities granted permits and properly closed under subtitle C of the Resource Conservation and Recovery Act (RCRA) (Title II of the Solid Waste Disposal Act).[9]

This transfer of liability to the Trust Fund may take place after (1) the owner and operator of the facility has complied with the requirements under RCRA which may affect the performance of the facility after closure, (2) the facility has been closed in accordance with the regulations and the conditions of the permit, and (3) the facility has been monitored (as required by the regulations and permit) for a period not to exceed 5 years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur (sec. 107(k) of CERCLA). The transfer of liability is to be effective 90 days after the owner or operator of the facility notifies the Administrator of the Environmental Protection Agency (and the State, if it has an authorized program) that the required conditions have been satisfied. No liabilities have yet been transferred to the Post-closure Trust Fund under present law. In addition to payment of damages and cleanup expenses for such sites, the Trust Fund also may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons, after the the period of monitoring required by RCRA, for facilities meeting the applicable transfer of liability requirements. The Post-closure Liability Trust Fund does not assume the legal liability of waste generators or transporters.

As in the case of the Superfund, claims against the Post-closure Liability Trust Fund may be paid only out of this Trust Fund. If, at any time, claims against this Trust Fund exceed the balance available for payment of those claims, then the claims are to be paid in full in the order in which they are finally determined.

The Post-closure Liability Trust Fund is subject to the same administrative provisions as the Superfund, including the right to borrow limited amounts from the Treasury as repayable advances.

Tax on hazardous wastes

Present law (sec. 4681 of the Code) imposes an excise tax (the "post-closure tax") of $2.13 per dry-weight ton on the receipt of hazardous waste at a qualified hazardous waste disposal facility. The tax applies only to hazardous waste which will remain at the facility after the facility is closed. The tax is imposed on the owner or operator of the qualified hazardous waste disposal facility. It was intended that amounts equivalent to the revenues from this tax be deposited into the Post-closure Liability Trust Fund.

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[9] The Resource Conservation and Recovery Act (RCRA) provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transporation, storage, and treatment of these wastes. Permits generally are required under RCRA for hazardous waste treatment, storage, and disposal facilities.

For purposes of the post-closure tax, the term hazardous waste means any waste (1) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on December 11, 1980 (other than waste the regulation of which had been suspended by Congress on that date), and (2) which is subject to reporting and recordkeeping requirements under the Solid Waste Disposal Act as in effect on that date. Qualified hazardous waste disposal facilities are facilities which have received a permit or been accorded interim status under the Solid Waste Disposal Act.

The post-closure tax applies to the receipt of hazardous waste after September 30, 1983. However, if as of September 30 of any calendar year after 1983, the unobligated balance of the Post-closure Liability Trust Fund had exceeded $200 million, no tax would have been imposed during the following calendar year. Further, authority to collect the tax terminates (1) should cumulative receipts from the petroleum and chemical taxes described in the previous section reach $1.38 billion, or, (2) if earlier, after September 30, 1985 (sec. 303 of CERCLA).

B. Non-tax Provisions

1. General provisions

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) provides a statutory scheme to insure prompt response to and cleanup of releases of hazardous substances. The burden of paying for such actions is placed on the responsible party or, where the responsible party cannot be identified or held liable, on producers and users of the chemical feedstocks generally associated with the production of hazardous substances. In general, the law is designed to allow a governmental response to proceed where necessary, with the parties legally responsible for the release of hazardous substances later being held liable (without regard to fault) for damages and costs resulting from the release. To accomplish this, CERCLA created the Hazardous Substance Response Trust Fund ("Superfund"), to be financed by a combination of special environmental taxes and Federal appropriations and to be available for response actions and certain related liability claims.

Under CERCLA, the President is authorized, in the case of a release or threatened release of a hazardous substance or a pollutant or contaminant into the environment, to take whatever removal, remedial or other response action he determines to be appropriate under the National Contingency Plan (originally contained in the Clean Waster Act but subsequently revised to apply to CERCLA). Releases subject to CERCLA include any release of a hazardous substance, other than workplace releases, certain nuclear releases, engine exhausts, and the normal application of fertilizer. Hazardous substances are defined as substances identified in specified sections of the Clean Water Act, the Clean Air Act, the Solid Waste Disposal Act, and the Toxic Substances Control Act, and those designated under CERCLA. Hazardous substances do not include petroleum (unless specifically designated as hazardous under these laws), or natural or synthetic gases. The Environmental Protection Agency (EPA) is authorized to designate additional substances as hazardous if they present substantial danger to the public health or welfare or to the environment.

CERCLA required the Federal government to develop a national list of sites (the National Priorities List) which are serious enough to require remedial action. This National Priorities List is required to include the 400 most hazardous sites, and is required to be updated annually. In compiling this list, the EPA identifies and evaluates hazardous sites, beginning with a preliminary assessment of available information and proceeding (where appropriate) to an actual site inspection. The sites are then ranked according to criteria relating to relative potential danger from the release or threatened release of hazardous substances into the air, surface water, or groundwater at the site, with the highest ranking sites being selected for the National Priorities List.

Sites which are listed on the National Priorities List are eligible for EPA long-term cleanup actions, using money from the Superfund. The State in which the site is located generally is required to pay 10 percent of the capital and first-year operating costs of a remedial action (50 percent or greater for State or locally owned or operated sites) and 100 percent of the operating costs in subsequent years.

As an alternative to proceeding with a Superfund-financed cleanup, the EPA has authority, under section 106 of CERCLA, to initiate enforcement actions (including civil action and administrative orders) to compel responsible parties to finance cleanup activities. The EPA also has broad authority to enter into negotiations with responsible parties regarding voluntary cleanups or cash settlements. The availability of these alternatives (i.e., negotiation, enforcement, and Government-funded cleanup) is intended to permit a larger number of sites to be cleaned up than would be possible using any one method.

If a governmental cleanup is initiated, the EPA has further authority to allow the State to take a lead role in site response (cooperative agreements) or (if EPA takes the leading role) to follow various long-term cleanup strategies. The EPA also may initiate removal actions (including removal of hazardous substances, evacuation of affected persons, and other emergency measures) to prevent immediate and significant harm to human life, health, or the environment.

In addition to the cost of cleanup applications, there is authorized to be paid out of the Superfund certain unsatisfied claims for damages resulting from the release of hazardous substances; claims for injury to, or destruction of, natural resources owned or controlled by the Federal or State governments; and specified costs relating to site response or resource restoration. Payment of these claims by the Fund transfers to the Fund the right of the claimant to sue the party responsible for releasing the hazardous substance; thus, Fund representatives may attempt to recover claim payments from the responsible party or parties. There is no general provision for private damage claims against the Fund.

2. Liability provisions

Section 107 of CERCLA imposes liability for cleanup costs incurred under the National Contingency Plan, and for costs associated with natural resource damages, on any person who is or was the owner or operator of a site or the generator or transporter of hazardous substances released into the environment. A strict liability standard (i.e., regardless of negligence) applies, and only limited defenses (including acts of war, acts of God, and acts of independent third parties where the defendant exercises due care) are allowed. No liability arises with respect to releases permitted under provisions of existing Federal laws or the application of registered pesticides.

Liability under CERCLA is generally limited to $50 million per release, allowing owners and operators more readily to obtain insurance for their ability. In addition, owners and operators of vessels and offshore facilities are required to maintain evidence of financial responsibility, and the President is authorized to provide financial responsibility requirements for onshore facilities beginning in 1985.

The amounts recovered under these liability provisions are deposited in the Superfund. CERCLA also provides for certain penalties and punitive damages which are to be deposited in the fund. These include punitive damages of up to three times the amount of costs incurred as a result of the failure without sufficient cause, by a person liable for a release or threatened release of a hazardous substance, to provide proper removal or remedial action upon order of the President pursuant to the Act.

CERCLA also authorizes creation of an Agency for Toxic Substances and Disease Registry to improve data collection and otherwise assist in matters concerning toxic substances and human health.

3. Related statutes

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) (Title II of the Solid Waste Disposal Act) provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transportation, storage, and treatment of these wastes. Permits are required for treatment, storage, and disposal facilities. The Environmental Protection Agency may sue to require cleanup of an active or inactive disposal site if the site is posing an imminent and substantial hazard to public health and if there is a known responsible party. However, this provision does not provide funds for cleanup of hazardous waste disposal sites when the owner is unknown, is not responsible, or is financially unable to pay for these costs.

The Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) made various amendments to RCRA. These include: prohibitions against the land disposal of specified types of waste (subject to certain EPA determinations) and against the placing of noncontainerized or bulk liquid hazardous waste in landfills; minimum technological standards and groundwater monitoring requirements for land disposal sites; special rules for generators generating between 100 and 1,000 kilograms of hazardous waste per month, and a ban on underground injection near an underground source of drinking water (with an exemption for RCRA and CERCLA cleanups). The 1984 amendments also included a new regulatory program for underground storage tanks.

Federal Water Pollution Control Act ("Clean Water Act"), Section 311

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1331) established a $35 million revolving fund maintained by fines, penalties, and appropriations of general revenue. The fund may be used for cleanup of releases of oil into navigable waters and restoration of accompanying natural resources. The Act also establishes strict joint and several liability pertaining to responsibility for cleanup expenses, and authorizes the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.[10]

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[10] Special oil spill compensation funds were also created under the Trans-Alaska Pipeline Authorization Act (TAPPA) (43 U.S.C. sec. 1651) (maximum $100 million fund), the Outer Continental Shelf Amendments of 1978 (43 U.S.C. sec. 1331) ($200 million fund), and the Deep Water Port Act of 1974 (33 U.S.C. sec. 1502) ($100 million fund), to compensate for damages from specified categories of oil spills. These funds are financed by per barrel fees on certain oil. Collection of the fee under the Deep Water Port Act was suspended by P.L. 98-419 (the Deep Water Port Act Amendments of 1984).

III. OPERATION OF SUPERFUND PROGRAM UNDER PRESENT LAW

A. Superfund Program Activities

Since the Superfund program started operating in 1981, it has been involved mainly in conducting emergency responses ("removal actions") and in identifying and evaluating abandoned waste sites in order to implement long-term cleanup ("remedial action"). As of the end of fiscal year 1984, the Environmental Protection Agency (EPA) had identified 18,884 potentially hazardous sites in the United States. As shown in Table 2, preliminary assessments were completed at 10,767 of these sites (57 percent). Of the sites assessed, investigations were completed at 3,601 sites, and 546 were subsequently placed on the National Priorities List (NPL) based on their high degree of hazard. The EPA estimates, assuming current ranking criteria, that between 1,403 and 2,200 sites will ultimately be added to the NPL.

Table 2.—Status of Potentially Hazardous Waste Sites

[Number of sites]

Site status	Through fiscal year 1984	Projected		
		Low estimate	Middle estimate	High estimate
Listed in ERRIS [1]	18,884	22,000	NA	NA
Preliminary assessment	10,767	15,200	NA	NA
Site investigation	3,601	4,285	NA	NA
National Priorities List [2]	546	1,403	1,800	2,200

[1] The Emergency Remedial and Response Information System (ERRIS) is an inventory of potentially hazardous sites maintained by the EPA.

[2] The National Priorities List contains sites determined to require remediation. An additional 244 sites were proposed for listing in October 1984, and another 26 sites were proposed in April 1985.

Source: U.S. Environmental Protection Agency.

As shown in Table 3, of the 546 sites on the NPL, the EPA anticipates beginning initial remedial cleanup measures at 87 sites and completing cleanup at 15 sites by the end of fiscal year 1985. The EPA has implemented more removal actions (which are generally less expensive and shorter term) than it has remedial actions. By the end of FY 1985, the EPA anticipates completing 576 removal actions.

Table 3.—Superfund Program Activities

[Fiscal years]

Action	1981	1982	1983	1984	1985 [1]	Total 1981–85
Remedial: [2]						
Preliminary assessment	[3] 2,454	[3] 2,454	1,891	3,968	5,215	15,982
Site inspection	[3] 870	[3] 870	550	1,311	1,380	4,981
Feasibility study:						
Program-lead	20	30	84	97	69	300
Enforcement-lead	0	0	23	36	35	94
Remedial design	5	5	6	18	64	98
Remedial action	1	22	19	20	25	87
Completion	0	5	1	0	9	15
Removal: [4]						
Completion	20	63	102	202	189	576

[1] Projected.

[2] Number of sites.

[3] Estimate.

[4] Number of actions.

Source: U.S. Environmental Protection Agency.

B. Hazardous Substance Response Trust Fund

Outlays

Funding for remedial and removal actions comes from the Superfund. As a result of the long start-up time required for planning site remediation projects, outlays from the Superfund have been substantially less than receipts. As shown in Table 4, outlays through fiscal year 1984 were $520.7 million, about 45 percent of the $1,151.7 million received by the Fund in this period.

No claims for injury to, or destruction or loss of, natural resources have yet been paid by the Fund. However, 57 claims for such damages, totaling $2.7 billion, have been submitted by four States to EPA. EPA has rejected the claims because they have not been presented to the responsible party and a restoration plan has not been prepared as required by CERCLA. These claims are currently the subject of litigation.

Table 4.—Superfund Accounts, Fiscal Years 1981-84

[In millions of dollars]

Item	1981	1982	1983	1984	Total, 1981-84
Receipts	145.0	307.4	331.6	367.7	1,151.7
Transfer from Coast Guard	6.7	0	0	0	6.7
Excise taxes	127.9	244.0	230.2	261.2	863.3
Appropriations from general fund	9.0	26.6	40.0	44.0	119.6
Interest income	1.3	34.5	61.0	59.0	155.8
Recoveries	0	2.3	0.4	3.4	6.1
Outlays	8.0	79.6	147.8	285.3	520.7
End of year cash balance	136.9	364.8	548.6	617.6	NA
Budget obligation	40.3	180.7	230.2	465.6	916.8
Removal and remediation	30.7	149.0	175.9	366.7	722.3
Enforcement program	2.5	8.4	17.7	26.7	55.3
Research and development	4.7	13.8	6.8	10.2	35.5
Management	2.3	9.5	11.4	17.2	40.4
Interagency	0	0	18.4	44.8	63.2
Unobligated balance	104.8	231.5	319.7	227.0	NA

Sources: (1) Dept. of Treasury, *Treasury Bulletin*, First quarter, Fiscal 1985, p. 210; (2) U.S. Environmental Protection Agency.

Receipts generally

The primary source of Superfund revenue has been the excise taxes on petroleum and 42 chemicals ("feedstock tax") enacted in 1980. In addition to the excise taxes, appropriations from general revenues provided about 10 percent of the Superfund's financing in the first four years of operation. Interest income has become an increasingly important source of revenue as the Fund's balance has increased (due to receipts in excess of outlays).

When the Superfund was enacted, it was envisioned that collections from parties responsible for hazardous waste sites would replenish the Trust Fund. However, cost recoveries have been small, with only $6.1 million collected through September 1984. Cost recovery proceedings are generally initiated after remediation is completed and total costs are known. The EPA estimates that cost recovery actions will generate $32 million in fiscal year 1986, $55 million in 1987, $85 million in 1988, $115 million in 1987, and $190 million in 1990.

Part of the cost of cleaning Superfund sites is paid by responsible parties directly, under consent orders and settlement agreements with the EPA, and is not recovered by the Superfund. As shown in Table 5, private parties have agreed to expend $364 million on hazardous waste site cleanups, of which $297 million involved sites on the National Priorities List.

Table 5.—Hazardous Waste Site Settlements and Unilateral Orders in Compliance

[Value in millions of dollars]

Site	1980	1981	1982	1983	1984	1985 [1]	Total 1980–85
National priorities list	0	34.0	12.5	99.3	146.5	4.3	296.6
Other	0.9	19.9	7.9	9.3	23.4	4.9	67.3
Total	0.9	53.9	20.4	108.6	169.9	9.1	363.9

[1] Through March 1985.

Source: U.S. Environmental Protection Agency.

Chemical feedstock and petroleum taxes

The chemical feedstock and petroleum excise taxes have generated about three-quarters of the Superfund receipts, although tax revenues are running 20 percent less than the $307 million per year rate projected in 1980. The shortfall is in part due to the economy-wide recession in the early part of the period in which the taxes have been effective. Excise tax liability has increased to $71 million per quarter, in the first two quarters of fiscal year 1984, after declining to $57 million per quarter in fiscal year 1983 (see Table 6). As shown in Table 6, the portion of the excise taxes generated from each category (petrochemicals, inorganic chemicals, and petroleum) has been extremely stable, and is remarkably close to the original estimate (65 percent from petrochemicals, 15 percent from inorganic chemicals, and 20 percent from petroleum).

Table 6.—Revenues from Feedstock and Petroleum Taxes [1]

[Dollar amounts in millions]

Taxable substance	Fiscal year—									
	1981 quarters III-IV		1982 quarters I-IV		1983 quarters I-IV		1984 quarters I-II		Total fiscal years, 1981-84	
	$	%	$	%	$	%	$	%	$	%
Petrochemicals	86	66.2	157	65.6	150	66.1	98	69.0	501	66.7
Inorganic chemicals	24	18.8	42	17.4	40	17.6	23	16.2	128	17.0
Petroleum	19	14.9	39	16.4	36	15.9	20	14.1	118	15.7
Unallocated	0	0.0	1	0.6	1	0.4	1	0.7	4	0.5
Total	129	100.0	239	100.0	227	100.0	142	100.0	751	100.0
Quarterly average	65		60		57		71		63	

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[1] In these data, excise taxes are allocated to the fiscal quarter in which the liability arises (which may be earlier than the quarter in which Treasury receives payment).

Source: Dept. of Treasury, Internal Revenue Service, *SOI Bulletin*, Vol. 3, No. 2, (Fall 1983), pp. 31-34; and updated information from the Statistics of Income Branch of the IRS.

The Internal Revenue Service estimates that the excise taxes, as of March 1984, were paid by 611 companies. Although the average annual chemical feedstock tax liability for 1983 was approximately $0.5 million per taxpayer, most of the revenue is collected from a small number of companies with very large production volumes. From June 1981 through March 1984, the 10 largest payers of the excise taxes accounted for approximately 47 percent of the total tax liability.

IV. SUMMARY OF S. 51, AS REPORTED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

In general

S. 51, as reported by the Committee on Environment and Public Works on March 7, 1985 (S. Rep. No. 99-11, filed on March 18, 1985), extends the Superfund for five years (through September 30, 1990) at an aggregate funding level of $7.5 billion, including tax revenues of $6.47 billion and general revenues of $1.03 billion. Although not containing a full revenue title, S. 51 specifies that an exemption from the chemical feedstocks tax (sec. 4661) is to be allowed for substances used to produce animal feed.[11]

Reauthorization provisions

As reported by the Committee on Environment and Public Works, S. 51 would extend and expand the Superfund program for 5 years at a total cost of $7.5 billion. Several provisions of the legislation would be likely to have a significant cost impact. These include the following provisions:

Scope of program.—The bill clarifies that the President should give primary attention in using Superfund proceeds to releases which present a public health threat, and specifies types of releases which are not covered by the Superfund, including certain contamination of groundwater resulting from natural causes. A special "savings clause" allows the President to respond to any release or threatened release, despite these exclusions, in emergency cases.

Cleanup standards.—The bill expressly defines the standards to be applied in cleaning up Superfund sites, requiring at a minimum that human health and the environment be protected by such cleanups. The specific remedy at any site is left to a case-by-case determination. However, the bill specifies that permanent solutions (e.g., treatment) are to be preferred to shorter-term response (e.g., containment of hazardous waste).

Limits on removal actions.—The bill would expand the criteria under which the general $1 million and one-year (formerly 6 months) duration limits on removal actions may be exceeded, allowing these limits to be exceeded whenever appropriate to achieve a permanent remedy.

Operation and maintenance costs.—The bill would require that when the remedial action is pumping and treatment of contaminated ground or surface waters, the Superfund must provide 90 percent of operation and maintenance costs for a period of 5 years (as opposed to 1 year under the current policy).

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[11] A proposed revenue amendment to S. 51, introduced by Senator Stafford and including specific tax proposals, is discussed in Part VI.

Health studies and toxicological profiles.—The bill would establish a program for conducting health studies at Superfund sites and for requiring health effects research on selected toxic chemicals for which there is inadequate data. This program is authorized at a minimum appropriation level of $50 million per year, or a 5-year total of $250 million. The bill further mandates establishment of a hazardous substance inventory for Superfund sites.

State credit for past expenditures.—The bill would allow a State to receive a credit for pre-Superfund expenditures against the law's required cost-sharing requirement. Additionally, where the State enters into a cooperative agreement with respect to a site on the National Priorities List, the State could receive credit for certain costs incurred prior to any obligation of Federal Funds.

Victims' assistance.—The bill would establish a 5-year, five State demonstration program to provide assistance to the victims of hazardous wastes and toxic chemicals. It is authorized to a funding level of $30 million per year, or $150 million over a period of 5 years; the funding source would be the general revenue authorization described above.

In addition to these provisions, S. 51 includes several procedural and enforcement changes, including increased penalties; a provision for real estate liens against certain responsible parties; and a provision that civil or administrative actions be allowed to be completed before contribution suits between responsible parties may proceed. The bill also requires an opportunity for public comment before remedial actions are taken or settlements agreed to, and allows citizen suits to enforce CERCLA requirements and to seek the performance of nondiscretionary duties by EPA.

Trust fund provisions

S. 51 would modify the present law trust fund provisions to authorize appropriations of up to $206 million per year for fiscal years 1986 through 1990 from general revenues. The bill would retain all present-law expenditure purposes, including natural resource damage claims; as under present law, such claims could not exceed 15 percent of amounts appropriated to the fund. S. 51 would further limit the authority to collect Superfund taxes during the 5-year period beginning October 1, 1985, to $6.47 billion.

V. DESCRIPTION OF ADMINISTRATION PROPOSAL (S. 494 AND S. 972)

A. Overview

The Administration proposal[12] would extend the Superfund through September 30, 1990, and provide a projected $4.5 billion in tax revenues to the fund during the extension period. These revenues would be derived primarily from (1) an extension of the taxes on petroleum and feedstock chemicals under present law, and (2) a tax on the treatment, storage, disposal, and export of hazardous wastes ("waste management" tax), effective October 1, 1985. The waste management tax is intended to raise approximately two-thirds of the tax revenue under the proposal, and the rates of this tax would be adjusted (if necessary) to cover shortfalls in overall Superfund revenues during the extension period. No money would be made available to the Superfund from general revenues. Approximately $800 million of additional Fund income is projected from interest, cost recoveries, and fines, for total 5-year revenue of $5.3 billion.

The Administration proposal would delete natural resources damage claims as a permissible use of the Superfund, impose benchmark cleanup standards for Superfund sites, and make various further changes affecting the use of fund proceeds. No specific schedule for cleanup activities would be provided.

B. Hazardous Substance Superfund

Under the Administration proposal, the Hazardous Substance Response Trust Fund officially would be renamed the "Hazardous Substance Superfund," and would be placed in the trust fund subtitle of the Internal Revenue Code. The Secretary of the Treasury would continue to manage the fund and to report annually to Congress on the financial condition and operations of the fund (Code sec. 9602). The substantive trust fund provisions would generally be the same as under present law, with the following modifications.

First, under the proposal, waste management tax revenues (technically, amounts equivalent to these revenues) would be added to present law Superfund revenue sources.[13] Also, the balance of the Post-closure Liability Trust Fund, as of September 30, 1985, would be transferred to the Superfund, in conjunction with the repeal of that Trust Fund (described below).

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[12] The proposal has been introduced by Senator Stafford, by request, as S. 494 (non-revenue aspects) and S. 972 (revenue aspects).

[13] Present law revenue sources include the petroleum and feedstock chemical taxes (Code secs. 4611 and 4661), amounts recovered on behalf of the fund under CERCLA (as amended), all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act, and penalties and punitive damages under the appropriate sections of CERCLA.

Second, the proposal would delete natural resource damage claims (section 111(b) of present law CERCLA) as a permitted expenditure purpose. This would leave three permitted expenditure purposes for the Superfund: (1) response costs; (2) related costs described in section 111(c) of CERCLA; and (3) compensable but unsatisfied claims under section 311 of the Clean Water Act.

Third, as under present law, the Superfund would be allowed to borrow from the Treasury, as repayable advances, amounts not exceeding estimated revenues during the next 12 months; however, such advances would not be limited (as they are under present law) to catastrophic spills. All such advances would be required to be repaid on or before September 30, 1990.

The amended trust fund provisions would be effective on October 1, 1985.

C. Tax Provisions

1. Taxes on petroleum and feedstock chemicals

The Administration proposal would continue the taxes on petroleum (Code sec. 4611) and feedstock chemicals (sec. 4661), at their present law rates, through September 30, 1990.

A special rule would provide for suspension or termination of each of these taxes if, on September 30, 1988 or 1989: (1) the unobligated Superfund balance exceeds $1.5 billion, and (2) the Treasury, after consulting with EPA, determines that this balance will exceed $1.5 billion on the following September 30th if neither of these taxes or the waste management tax (described below) are imposed during the intervening year. If these conditions are met, the tax would be suspended for one year following the date of the determination. Authority to collect the petroleum, feedstock, and waste end taxes would expire when and if Superfund receipts from sources (including tax revenues, interest, recoveries, and fines) total $5.3 billion.

2. Waste management tax

Imposition of tax

Under the Administration proposal, a tax would be imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. The term "hazardous waste" would mean any waste listed or identified under section 3001 of the Solid Waste Disposal Act (SWDA), as amended. (This portion of the SWDA is also known as the Resource Conservation and Recovery Act (RCRA).) The Treasury, in consultation with EPA, would prescribe rules relating to the imposition of tax, if any, on wastes listed under the SWDA after the date of enactment.

For purposes of the tax, a qualified hazardous waste management unit is defined as (1) the smallest area of land on or in which hazardous waste is placed or, (2) a structure on or in which hazardous waste is placed, provided that such area or structure isolates hazardous waste within a qualified hazardous waste management facility and is required to obtain interim status or a final permit under Subtitle C of the SWDA. A qualified waste management facility is defined as any facility (as defined under Subtitle C of the SWDA) which has received a permit or has been accorded interim status under section 3005 of the SWDA (or an equivalent State program authorized under section 3006 of that Act). This distinction between units and facilities means that tax would not necessarily be imposed at qualified facility until hazardous waste is received at a specific unit that isolates hazardous wastes within the overall facility.

The terms "treatment", "storage", and "disposal" would be defined as in section 1004 of the SWDA. The term "ocean disposal" would be defined as the incineration or dumping of hazardous waste over or into ocean waters or certain waters described in the Marine Protection Research and Sanctuaries Act of 1972.

Tax rates

Statutory rates.—The Administration's proposed waste management tax would be imposed at two distinct rates, depending on the treatment or disposal method employed for the hazardous waste.

For hazardous waste received in a landfill surface impoundment, waste pile, or land treatment unit [14] (that meets the definition of a qualified hazardous management unit), the tax would be imposed at a rate of $9.80 per ton for fiscal year 1986. This rate would be "phased up" in each succeeding fiscal year, reaching a maximum rate of $16.32 for fiscal year 1990 as well as any 1991 extension period (discussed below).

For hazardous waste exported from the United States, received for transport from the United States for purposes of ocean disposal, or received at a qualified hazardous waste management unit other than a landfill, surface impoundment, waste pile, or land treatment unit, the tax rate would be $2.61 per ton for fiscal year 1986, phasing up to $4.37 per ton in fiscal 1990 (and any 1991 extension period).

Rate adjustments.—In addition to the phase-up of rates described above the Administration proposal calls for adjustments in the waste management tax rates, beginning in 1988, to cover any shortfalls of Superfund revenues from all sources (including the petroleum, feedstock and waste end taxes, recoveries, penalties, and interest). These adjustments would be made according to a series of statutory formulas. Each fiscal year of the reauthorization period, aggregate Superfund revenues would be compared to preset "projected revenue amounts" (see Table 7). The waste management tax rates would then be increased, beginning in 1988, to cover overall Superfund revenue shortfalls for the year which is two years earlier than the year in question (i.e., 1988 tax rates would compensate for 1986 shortfalls, and so on), with a final adjustment in 1990–91 in order to meet the original 5-year revenue targets. The formulas in the Administration proposal are intended to ensure that revenue targets are met, without delegating authority to Treasury to readjust the tax rates.

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[14] These terms would be defined as under EPA regulations issued pursuant to sections 3004 and 3005 of the SWDA.

Table 7.—Projected Superfund Revenues For Purpose of Implementing Rate Adjustments Under Administration Proposal

Fiscal year	Projected overall Superfund revenues (millions)
1986	$978
1987	989
1988	1,035
1990	1,093
1991	1,205

As a final measure to achieve revenue targets, the proposal allows for a maximum 6-month extension of the tax, at 1990 rates, if aggregate receipts for the period from October 1, 1985 through September 30, 1990 are less than $5.2 billion.

Exemptions

Two full exclusions from the waste management tax would be provided under the Administration proposal. First, an exclusion would be provided for the treatment, storage, or disposal of any hazardous waste pursuant to a removal or remedial action under CERCLA, where (1) the response action has been selected or approved by EPA, and (2) the release, or threatened release, of the substances which caused the response action occurred before October 1, 1985. Second, hazardous waste generated at a federal facility, and subsequently received at a qualified hazardous waste management unit or exported from the United States, would be exempt from tax. The Administration proposal does not provide an exemption for the treatment of hazardous wastes.

Procedure and administration

Imposition of tax.—Generally, the tax would be imposed on the owner or operator of a qualified hazardous waste management unit. In the case of ocean disposal, tax would be imposed on the owner or operator of the vessel or aircraft that disposes of hazardous waste in or over the ocean. In the case of export, tax would be on the exporter of hazardous waste.

Credit for tax paid.—The proposal includes a mechanism for credits or refunds where tax is paid with respect to hazardous waste and the waste is subsequently received at another qualified unit, received for transport for ocean disposal, or exported from the United States (i.e., where a second taxable event takes place). The amount of this credit is limited to the product of (1) the lesser of (a) the quanitity of hazardous waste transferred, or (b) the quantity of hazardous waste on which the tax was previously paid, multiplied by (2) the lesser of (a) the rate of tax payable by the party receiving the hazardous waste, or (b) the rate of tax previously paid on the waste. These limitations prevent a refund for an amount greater than the tax originally paid.

Credits or refunds would be made, without interest, to the person who paid the original tax, following the same procedures as would be used for overpayments of tax.

Information reporting.—Persons subject to the waste management tax would be required to submit to the Treasury such information as may be required in regulations, including (but not limited to) information which is required to be provided to EPA under the SWDA. A penalty of $25 per day (but not to exceed $25,000) would be imposed for failure to provide such information, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The proposal specifies that this is in addition to any other penalty provided by law.

Effective date

The waste management tax would be effective for hazardous waste received or exported after September 30, 1985.

Termination date

The tax would expire after September 30, 1990, unless the Treasury determines that total Superfund receipts for the period October 1, 1985 through September 30, 1990 are less than $5.2 billion. In that case, the tax would terminate no later than March 31, 1991 (at the 1990 rates). Authority to collect the tax (together with the petroleum and feedstock chemical taxes) would expire earlier than September 30, 1990, when and if Superfund receipts during the reauthorization period (including interest and recoveries) total $5.3 billion.

D. Repeal of Post-closure Liability Tax and Trust Fund

The Post-closure Liability Trust Fund and the Associated waste disposal tax (Code secs. 4681 and 4682) under present law would be repealed, effective October 1, 1985. Amounts in the Post-closure Trust Fund at that time would be transferred to the Superfund (as described above).

E. Non-tax Provisions Affecting the Hazardous Substance Superfund

In addition to the tax and trust fund provisions described above, the Administration proposal would make various changes in the non-tax portions of CERCLA. Aspects of the proposal most likely to affect the uses of Superfund proceeds include the following matters:

Scope of activities.—As under present law, the proposal would concentrate Superfund resources on hazardous waste sites (principally, abandoned and uncontrolled sites); municipal and industrial waste sites with problems; and sites governed by RCRA but owned by insolvent companies. However, the proposal also includes a "safety valve" allowing the President to direct response to any emergency hazardous substance release using Superfund proceeds.

Cleanup standards.—The proposal would establish benchmark cleanup standards for Superfund sites. In general, these standards set levels of protection equal to those established by other environmental statutes, and are intended to promote permanent cleanup solutions at Superfund sites.

State responsibilities.—The State "matching share" of capital cleanup costs would be increased from 10 to 20 percent (from 50 to 75 percent for State-operated sites). However, the proposal would also allow States to enact taxes similar to the Superfund taxes (this is preempted under present law), and allow certain State enforcement costs to be eligible for funding.

Enforcement.—Enforcement provisions would be strengthened in several ways, including an increase in civil and criminal penalties; a provision for imposition of real property liens on responsible parties; and delay of contribution suits between potentially liable parties until after enforcement actions are judged or settled.

Community involvement.—The proposal includes a statutory requirement that affected citizens be notified of proposed cleanup actions, and be given an opportunity to comment.

VI. OTHER SENATE BILLS RELATING TO FINANCING OF SUPERFUND

A. S. 14 (Sens. Moynihan and Bentsen)—"Hazardous Substance Response Act of 1985"

Overview

S. 14 ("The Hazardous Substance Response Act of 1985"), introduced by Senators Moynihan and Bentsen, would impose a "waste end" tax designed to raise approximately $1.5 billion of Superfund revenues over a five-year period. The tax would be imposed on four different categories of hazardous waste, depending on the method of disposal or storage used for managing the hazardous waste, and would provide an exemption for hazardous waste treatment facilities. The tax imposed by the bill is intended to be an additional, rather than an exclusive, source of revenues for the Superfund.

Imposition of tax

The bill would impose a tax on (1) the receipt of a hazardous waste for disposal at a qualified hazardous waste disposal facility, or (2) the long-term storage of a hazardous waste in a qualified hazardous waste storage facility. Long-term storage would be defined as storage for one year or more.[15]

Hazardous waste subject to the tax would include any waste which is identified or listed under section 3001 of the Solid Waste Disposal Act (SWDA) as in effect on the date of enactment of the bill, other than waste the regulation of which has been suspended by Congress, and which is subject to recordkeeping requirements under sections 3002 and 3004 of that Act. The tax would not apply to any wastes which are exempt from regulation as a hazardous waste under section 3001 of the SWDA as of the date of enactment. If any waste is subsequently determined by EPA to pose a potential danger to human health and the environment following studies under section 8002 of the SWDA, and if EPA promulgates regulations for the disposal of such waste, then the bill directs EPA to transmit to Congress a recommendation for imposing tax on the disposal or long-term storage of such waste. Tax would actually be imposed only when authorized by legislation.

Qualified hazardous waste storage facilities would include any storage facility, waste pile, or surface impoundment permitted or accorded interim status under section 3005 of the SWDA.[16] Qualified hazardous waste disposal facilities would mean any disposal facility permitted or accorded interim status under section 3005 of the SWDA, section 102 of the Marine Protection, Research and Sanctuaries Act, or part C of the Safe Drinking Water Act.

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[15] For purposes of this rule, in the case of fungible waste, the last waste placed in a facility would be presumed to be the first waste removed (i.e., LIFO accounting).

[16] The terms "waste pile" and "surface impoundment" would be defined by reference to the SWDA.

For purposes of the tax, the term disposal would mean the discharge, deposit, injection, dumping, or placing of any hazardous waste into or on any land or water so that such hazardous waste may enter the environment.

Tax would not be imposed on hazardous waste that is "treated" within one year after receipt at a hazardous waste facility. Treatment is defined as any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to convert it to a nonhazardous waste.[17]

Tax would also not be imposed under the bill on the hazardous waste that is reclaimed. Reclamation includes (1) the processing of hazardous waste to recover a usable product (or to regenerate the waste), (2) the use of hazardous wastes as an ingredient (including an intermediate ingredient) in an industrial process, and (3) the use of hazardous wastes as an effective substitute for a commercial product. Reclamation does not include the use of hazardous wastes to produce products that are applied to the land or burned for energy recovery.

Tax would be imposed on the byproduct or residue from any treatment or reclamation method where such byproduct or residue itself constituted a hazardous waste.

Tax rates

Tax would be imposed on four categories of hazardous waste, depending upon the disposal or storage method employed.

(1) *Land disposal.*—A $45 per ton tax rate would apply to hazardous waste disposed of in landfills, waste piles, or surface impoundments (as defined under the SWDA).

(2) *Ocean dumping or land treatment.*—A $25 per ton tax rate would apply to hazardous waste disposed of by ocean dumping or land treatment.[18]

(3) *Underground injection.*—A $5 per ton tax rate would apply to hazardous waste which is disposed of by underground injection.

(4) *Long-term storage.*—A $45 per ton tax rate would apply to hazardous waste which is stored for more than one year.

As an alternative to the tax rates above, if the owner or operator of a qualified hazardous waste storage or disposal facility can establish the water content of the hazardous waste deposited for storage or disposal, the owner or operator could elect, pursuant to Treasury regulations, to pay a tax of $50 per ton on the amount of such waste reduced by the weight of water (i.e., on a "dry weight" basis).

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[17] For this purpose, air and water effluents permitted by the Federal Government or by delegated State agencies, under the Clean Air Act or the Clean Water Act, would be treated as nonhazardous wastes.

[18] Land treatment is a form of disposal regulated under RCRA. This is distinct from treatments as defined by the bill, which would be exempt from tax.

Exclusions from tax

The treatment or reclamation of hazardous waste (as defined under the bill) would generally not be subject to tax. The bill also would provide the following specific exclusions from otherwise applicable tax:

First, no tax would be imposed on the disposal or long-term storage of wastes in a surface impoundment which is part of a secondary or tertiary phase of a biological treatment facility subject to a permit issued under section 402 of the Clean Water Act. This exclusion would apply only if the facility is in compliance with generally applicable ground water monitoring requirements for facilities permitted under section 3005(c) of the SWDA.

Second, no tax would be imposed on the disposal or long-term storage of certain wastes under the provisions of CERCLA. This exclusion would apply to (1) any waste disposed of in the course of carrying out a removal or remedial action under CERCLA (provided that the disposal or storage is carried out in accordance with a plan approved by EPA or the State), (2) any waste removed from a faciity listed on the National Priorities List, and (3) any waste removed from a facility for which notification has been provided to EPA under section 103(c) of CERCLA (relating to certain nonpermitted facilities) or 105 of CERCLA (relating to the establishment of the national contingency plan for the removal of oil and hazardous substances).

Procedure and administration

Liability for tax.—The tax would be imposed on the owner or operator of the qualified hazardous waste disposal or storage facility. In the case of disposal, the tax would be imposed at the time that the owner or operator of the facility signs (or is required to sign) the manifest or shipping paper accompanying the hazardous waste (in the case of onsite facilities, the time at which the description and quantity of the hazardous waste are entered, or required to be entered, in the operating record). In the case of long-term storage, the tax would be paid at the expiration of one year following the date the waste was initially stored.

In the case of hazardous waste that is not disposed of or stored at a qualified facility as required in applicable regulations (e.g., "midnight dumping"), the tax would be imposed on the person disposing of or storing the hazardous waste.

Credit for prior tax.—Under the bill, if a person pays tax on the long-term storage of a hazardous waste, and the same person subsequently disposes of the waste, a credit would be allowed against the otherwise applicable disposal tax for any tax previously paid on the storage of the waste. If one person pays tax on the long-term storage of a waste and subsequently delivers that waste to another person, who is the owner or operator of a qualified disposal facility, then a nonrefundable credit would be allowed to the first person.[19]

Information reporting.—The bill would require any person liable for tax to keep records and comply with rules and regulations established by the Treasury Department to ensure proper assessment and collection of the tax. The Treasury Department would be directed to consult with EPA to ensure that records, statements, and returns for tax purposes be consistent, to the extent possible, with reports required to be submitted to EPA under the Solid Waste Disposal Act. As part of this coordination, the Treasury could require any generator, transporter, disposer, or storer of hazardous wastes to submit to the Treasury copies of records or reports required under the SWDA, the Marine Protection, Research and Sanctuaries Act, or the Safe Drinking Water Act.

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[19] For purposes of implementing these rules, in the case of fungible wastes, a "last-in first-out" presumption would apply.

Allocation to Superfund

Revenues from the tax (technically, amounts equivalent to these revenues) would be allocated to the Superfund under the appropriate provision of CERCLA.

Effective date

The tax generally would be effective for hazardous waste received for disposal or placed into long-term storage on or after January 1, 1986.

Termination date

The tax imposed by the bill would expire on September 30, 1990.

Study

The bill would require the Secretary of the Treasury, in consultation with the EPA Administrator, to submit to Congress not later than January 1, 1987, and annually thereafter, (1) a report on the amount of revenues being collected by the tax imposed by the bill, and (2) the Secretary's recommendations (if any) for changes in the tax. These would include recommended changes in order to (1) raise the amount of revenue originally anticipated from the tax, (2) ensure that the tax is discouraging the environmentally unsound disposal of waste, and (3) ensure that the tax is being collected with maximum administrative feasibility.

B. Revenue Amendment to S. 51 (Sen. Stafford)

S. 51, as reported by the Committee on Environment and Public Works, provides for a 5-year extension of the Superfund at an aggregate $7.5 billion funding level, not including interest and recoveries (discussed in Part IV above). A proposed amendment to S. 51, introduced by Senator Stafford,[20] is intended to raise this $7.5 billion over a five-year period, using the following revenue sources: (1) an extension of the petroleum tax at a 4.5 cent per barrel rate; (2) an expanded and (in some cases) increased tax on chemical feedstocks, to be indexed for inflation and including and export exemption; (3) a tax on disposals of hazardous waste as well as releases of hazardous substances (as defined by CERCLA) into the environment; and (4) a tax on a corporation's net receipts in excess of $75 million. The amendment would further direct a study of a tax on imported chemical derivatives to complement the chemical feedstock tax. Total Superfund revenues also would include $206 million per year of general revenue appropriations.

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[20] 131 Cong. Rec. S. 526 (Jan. 22, 1985). This amendment is a corrected version of an amendment orginally introduced on January 3.

In line with proposed funding level of S. 51, the authority to collect any Superfund taxes would terminate when the aggregate Superfund revenues during the reauthorization period equalled $7.5 billion.

Petroleum tax

The amendment would increase the present law environmental excise tax on petroleum from 0.79 cent per barrel tax to 4.5 cents per barrel, effective from January 1, 1985, through September 30, 1990. The tax would terminate earlier than September 30, 1990, on any date on which the Treasury Department, in a manner to be prescribed by regulations, determines that the sum of amounts received by reason of the petroleum, chemical feedstock, waste end and corporate net receipts taxes (proposed by the amendment) will equal $6.47 billion.

Tax on feedstock chemicals

Tax rates

The amendment would extend and expand the present law environmental excise tax on feedstock chemicals, so that the specified organic and inorganic substances sold by the manufacturer, producer, or importer would be taxed in accordance with the following table (Table 8).

Table 8.—Chemical Tax Rates Under Present Law and Proposed Revenue Amendment to S. 51

[Tax rates per ton, before any inflation adjustment]

Chemical substance	Present law	Proposed rate on sales during 1985	Proposed rate on sales after 1985
Organic chemicals:			
Acetylene	$4.87	$8.83	$10.23
Benzene	4.87	6.60	8.80
Butadiene	4.87	9.79	10.23
Butane	4.87	4.87	5.60
Butylene	4.87	5.15	6.87
Ethylene	4.87	6.89	9.19
Methane	3.44	3.44	3.44
Naphthalene	4.87	6.89	9.19
Propylene	4.87	5.87	7.82
Toluene	4.87	5.19	6.92
Xylene	4.87	7.70	10.23
Inorganic chemicals:			
Ammonia	2.64	2.64	3.52
Antimony	4.45	9.34	9.34
Antimony trioxide	3.75	7.87	7.88
Arsenic	4.45	9.34	9.34

Table 8.—Chemical Tax Rates Under Present Law and Proposed Revenue Amendment to S. 51—Continued

[Tax rates per ton, before any inflation adjustment]

Chemical substance	Present law	Proposed rate on sales during 1985	Proposed rate on sales after 1985
Arsenic trioxide	3.41	7.16	7.16
Barium sulfide	2.30	4.83	4.83
Bromine	4.45	9.34	9.34
Cadmium	4.45	9.34	9.34
Chlorine	2.70	3.05	4.07
Chromite	1.52	1.52	1.52
Chromium	4.45	9.34	9.34
Cobalt	4.45	9.34	9.34
Cupric oxide	3.59	7.54	7.54
Cupric sulfate	1.87	3.93	3.93
Cuprous oxide	3.97	8.34	8.34
Hydrochloric acid	0.29	0.61	0.61
Hydrogen fluoride	4.23	8.88	8.88
Lead oxide	4.14	0	0
Mercury	4.45	9.34	9.34
Nickel	4.45	9.34	9.34
Nitric acid	0.24	0.50	0.50
Phosphorus	4.45	9.34	9.34
Potassium dichromate	1.69	3.55	3.55
Potassium hydroxide	0.22	0.46	0.46
Sodium dichromate	1.87	3.93	3.93
Sodium hydroxide	0.28	0.59	0.59
Stannic chloride	2.12	4.45	4.45
Stannous chloride	2.85	5.98	5.98
Sulfuric acid	0.26	0.55	0.55
Zinc chloride	2.22	4.66	4.66
Zinc sulfate	190	3.99	3.99
Additional organix or inorganic chemicals:			
Acetone	0	8.64	8.64
Barium	0	0.81	0.81
Bis (2-ethylhexyl) phthalate	0	8.64	8.64
Carbon tetrachloride	0	8.43	8.43
Chlorobenzene	0	27.66	27.66
Chloroform	0	25.93	25.93
1,2-Dichloroethane	0	4.54	4.54
Etylbenzene	0	27.33	27.33
Lead	0	8.27	11.03
Methylene chloride	0	21.61	21.61
Methyl ethyl ketone	0	14.26	14.26
Pentachlorophenol	0	28.59	28.59
Phenol	0	44.95	44.95
1,1,2,2,-Tetrachloroethane	0	6.05	6.05

Table 8.—Chemical Tax Rates Under Present Law and Proposed Revenue Amendment to S. 51—Continued

[Tax rates per ton, before any inflation adjustment]

Chemical substance	Present law	Proposed rate on sales during 1985	Proposed rate on sales after 1985
1,1,2,2,-Tetrachloroethene	0	21.18	21.18
Trichloroethylene	0	60.51	60.51
1,1,1-Trichloroethane	0	39.33	39.33
Vinylchloride	0	11.24	11.24

For each year, the rates specified in the table would be adjusted for inflation. In the case of organic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic organic chemicals of the Bureau of Labor Statistics, for the 12-month period ending in September of the preceding year, exceeds the comparable average of the index for the 12 months, ending in September 1984. In the case of inorganic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic inorganic chemicals for the 12-month period ending in the preceding September exceeds the comparable averages for the 12 months ending in September 1984.[21]

Exemptions

The amendment would retain the present law exemptions to the tax on feedstock chemicals, and add the following two exemptions.

Exports of taxable chemicals.—The amendment would provide that the tax on feedstock chemicals is not to apply to feedstock chemicals that are exported from the United States. In particular, the amendment would exempt from tax any taxable substance that is sold by the manufacturer or producer for export, or for resale to a second purchaser for export. If the purchaser cannot certify in advance that a substance will be exported, or if a tax has otherwise been paid on the exported substance, the person who paid the tax could claim a refund or credit (without interest) for the amount of the tax previously paid; such person would be required to repay the tax to the exporter or to obtain the exporter's written consent to his receiving the credit or refund. The Treasury would be authorized to prescribe necessary regulations for administering these provisions.[22]

Substances used to produce animal feed.—An exemption from the feedstock tax would be provided for nitric acid, sulfuric acid, phosphoric acid, or ammonia (or methane used to produce ammonia) used in a qualified animal feed use by the manufacturer, producer, or importer, or else sold for use (or for resale for ultimate use) in a qualified animal feed use.[23] Qualified animal feed use would mean any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements. If tax is paid and a substance is subsequently used in a qualified animal feed use, under Treasury regulations, the person so using the substance would be entitled to a credit or refund (without interest) of the tax paid. Conversely, if an exemption is allowed and a substance is subsequently sold or used for a non-animal feed purpose, the person so selling or using the substance would be subject to tax as if he had manufactured the substance.

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[21] Tax rates would not be reduced below the levels shown in Table 6 even if the producer price index declines.

[22] Rules similar to the rules of sec. 4221(b) (regarding sales for further manufacture or export for excise tax purposes) would apply in determining proof of export.

Effective date

The amendments to the tax on feedstock chemicals would be effective from January 1, 1985.

Termination date

The tax would expire after September 30, 1990, with a provision for earlier expiration if the sum of Superfund tax revenues equals $6.47 billion (discussed above under the petroleum tax).

Environmental toxics tax

Imposition of tax

The amendment would impose a tax on (1) the release of any hazardous substance,[24] and (2) the receipt of a hazardous waste for disposal at a hazardous waste disposal facility.

Hazardous waste subject to the disposal tax (item (2) above) would include any waste (1) which is identified or listed under section 3001 of the Solid Waste Disposal Act (SWDA) as in effect on the date of enactment of the proposal, other than waste the regulation of which has been suspended by Congress, and (2) which is subject to recording or recordkeeping requirements under sections 3002 and 3004 of that Act. The tax would not apply to any wastes which are exempt from regulation as a hazardous waste under section 3001 of the SWDA as of the date of enactment. If any waste is subsequently determined by EPA to pose a potential danger to human health and environment, following studies under section 8002 of the SWDA, and if EPA promulgates regulations for the disposal of such waste, the amendment directs EPA to transmit to Congress a recommendation for imposing a tax (if any) on the disposal or long-term storage of such waste. This tax could actually be imposed only when authorized by legislation.

Hazardous waste disposal facilities would mean any disposal facility issued a permit or accorded interim status under section 3005 of the SWDA. The term "disposal", in turn, would mean the discharge, deposit, injection, dumping, or placing of any hazardous waste into or on any land, air,[25] or water so that such hazardous waste may enter the environment.

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[23] The animal feed exemption is also included in S. 51 itself, effective on the date of enactment of that bill.

[24] For these purposes, the terms "release" and "hazardous substance" (as well as the term "environment") would have the meanings assigned by CERCLA. This is distinct from the term "hazardous waste," which would be subject to tax on disposal and is specially defined by the amendment.

Tax rates

The tax would be imposed on three categories of waste, depending upon the type of waste and the method of release or disposal involved:

(1) *Land disposal methods.*—A tax at $150 per ton would be imposed for hazardous waste (as defined by the amendment) disposed of by landfill, by surface impoundment, or in waste piles.[26]

(2) *Federally permitted releases.*—A tax of $75 per ton would be imposed on hazardous substances (as defined by CERCLA) released in compliance with federally permitted release.

(3) *Other releases.*—A $150 per ton rate would apply to hazardous substances (as defined by CERCLA) released in any other manner.

The tax would generally be imposed on a "wet-weight" basis (i.e., including the volume of water which is part of the hazardous substance or waste). However, under the amendment, Treasury is authorized to issue regulations providing that, if the owner or operator of a hazardous waste disposal or hazardous substance handling facility can establish the water content of the hazardous waste or substance deposited or released, then the owner or operator could elect to pay a tax (at the general rates) on the weight of the hazardous weight reduced by the weight of such water (i.e., on a "dry-weight" basis).

Exemptions

As indicated above, the disposal of hazardous waste which is exempt from regulation under RCRA would not be subject to the tax. Specific exclusions from the disposal tax are also provided for (1) the disposal of any waste in the course of carrying out a removal or remedial action under CERCLA, provided that the disposal or storage is carried out in accordance with a plan approved by EPA or the State, and (2) any waste removed from a facility listed on the National Priorities List.

Procedure and administration

Liability for tax.—The tax would be imposed on the owner or operator of the qualified hazardous waste disposal facility (generally in the case of hazardous waste disposal), or the owner or operator of the hazardous substance handling or treatment facility (generally in the case of releases of hazardous substances). In the case of disposal at an off-site facility, the tax would be imposed at the time that the owner or operator of the facility signs (or is required to sign) the manifest or shipping paper accompanying the hazardous waste. In the case of onsite facilities, the tax would be imposed at the time at which the description and quantity of the hazardous waste are entered, or required to be entered, in the operating record.

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[25] Thus, under this definition, the emission of hazardous waste into the atmosphere would constitute a taxable disposal.

[26] The latter two terms would be defined by reference to the regulations under sec. 3005 of the SWDA.

Credit for prior tax.—The amendment provides that, if a person pays tax on the long-term storage of a hazardous waste,[27] and the same person subsequently disposes of the waste, a credit would be allowed against the otherwise applicable disposal tax for any tax previously paid on the storage of the waste. If a person pays tax on the long-term storage of a waste and subsequently delivers that waste to another person, who is the owner or operation of a qualified disposal facility, a credit would be allowed to the first person against any tax subsequently due from that person on the disposal or long-term storage of a hazardous waste.[28]

Information reporting.—The amendment would require any person who disposes of hazardous waste subject to the tax (or stores such waste for the year or more) to keep records and comply with rules and regulations established by the Treasury Department to ensure proper assessment and collection of the tax. The Treasury Department would be directed to consult with EPA to ensure that records, statements, and returns for tax purposes be consistent, to the extent possible, with reports required to be submitted to EPA under the Solid Waste Disposal Act. As part of this coordination, the Treasury could require any generator, transporter, disposer, or long-term storer of hazardous wastes to submit to the Treasury copies of records or reports required under the SWDA, the Marine Protection, Research and Sanctuaries Act, the Clean Air Act, the Clean Water Act, the Atomic Energy Act, the Uranium Mill Tailings Radiation Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act.

Allocation to Superfund

Revenues from the tax (technically, amounts equivalent to these revenues) would be allocated to the Superfund under the appropriate provision of CERCLA.

Effective date

The tax would be effective for hazardous waste received for disposal or placed into long-term storage on or after January 1, 1986 (i.e., on a prospective basis only).[29]

Study

The amendment would require the Secretary of the Treasury, in consultation with the EPA Administrator, to submit to Congress not later than January 1, 1987, and annually thereafter through 1989, (1) a report on the amount of revenues being collected by the environmental toxics tax imposed under the amendment, and (2) the Secretary's recommendations (if any) for changes in the tax. These would include recommended changes in order to (a) raise the amount of revenue originally anticipated from the tax, (b) ensure that the tax is discouraging the environmentally unsound disposal of waste, and (c) ensure that the tax is being collected with maximum administrative feasibility. The Treasury Secretary would further be required to study and recommend to Congress whether tax should be imposed on (1) releases of certain pesticides identified under the Federal Insecticide, Fungicide, and Rodenticide Act, and (2) chemicals which, according to the International Agency For Research on Cancer, have substantial evidence of carcinogenicity.

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[27] The amendment does not specifically impose tax on the long-term storage of hazardous waste; however, it is understood that such a tax is intended.

[28] For purposes of implementing these rules, in the case of fungible wastes, a "last-in first-out" presumption would apply.

[29] The amendment does not contain a specific termination date for the tax; however, the trust fund itself would be extended for five years only (i.e., through September 30, 1990). Additionally, authority to collect all Superfund taxes would expire when aggregate revenues during the reauthorization period reached $7.5 billion.

Corporate net receipts tax

General rules.—The amendment would impose a 0.014 percent tax on the net receipts of any corporation in excess of $75 million for any taxable year. Net receipts would be defined as the excess (if any) of gross receipts over the costs of goods sold by the taxpayer for the taxable year.

For purposes of the net receipts tax, all members of a controlled group of corporations [30] would be treated as one taxpayer. A similar rule would apply, under Treasury regulations, to trades or businesses (whether or not incorporated) which are under common control. The tax would apply to an unrelated business (within the meaning of Code sec. 512) of a tax-exempt orgnaization to the extent that net receipts from unrelated trades or businesses exceeded $75,000,000.

Effective date.—The net receipts tax would be effective for taxable years beginning after December 31, 1985.

Termination date.—The tax would not apply to any taxable year beginning after December 31, 1990. Authority to collect the petroleum, feedstock chemical, waste end and corporate net receipts taxes would terminate earlier if total Superfund revenues during the reauthorization period equal or exceed $7.5 billion.

Allocation to Superfund.—Revenues from the net receipts tax (technically, amounts equivalent to these revenues) would be deposited in the Superfund.

Study of imported derivatives tax

In connection with extending and expanding the chemical feedstocks tax, the amendment would direct the Treasury Department to study the economic effects of the feedstocks tax and the feasibility and desirability of imposing a tax on imported derivatives of substances subject to the tax. This study would be required to develop the methodology for selecting the list of substances and to list the substances which would be subject to such a tax and their corresponding item numbers in the Tariff Schedules of the United States. The International Trade Commission ("ITC") would further be directed to study the trade effects of the feedstocks tax with and without a tax on imported derivatives and the means of making a tax on derivatives compatiable with current international trade agreements. The Treasury would be required to submit the list of potential taxable substances by March 1, 1985, and the full Treasury report would be due June 1, 1985. The ITC report would be due 4 months after the Treasury list is submitted.

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[30] Determined using a 50-percent test and without regard to the special rules regarding insurance companies (sec. 1563(a)(4)) and tax-exempt employees' trusts (sec. 1563(e)(3)(C)).

C. S. 596 (Sen. Bradley)[31]—"Superfund Extension and Improvement Act of 1985"

Overview

S. 596 ("The Superfund Extension and Improvement Act of 1985"), introduced by Senator Bradley, is intended to provide $7.5 billion of financing for the Superfund over a five-year period. Financing is derived from three primary revenue sources: (1) an extension of the petroleum and feedstock chemicals taxes at present law rates; (2) a waste end tax identical to that provided in S. 14, introduced by Senators Moynihan and Bentsen; (3) a net receipts tax on corporations with annual gross revenues in excess of $50 million. Financing would also include $44 million per year of general revenue appropriations. The non-tax aspects of the bill are generally identical to S. 51, as reported by the Committee on Environment and Public Works (discussed in section IV, above); however, the bill would also include a target cleanup schedule for Superfund sites.

Petroleum and feedstock chemicals taxes

The bill would extend the petroleum and feedstock chemicals taxes at their present law rates, from October 1, 1985, through September 30, 1990. These taxes would terminate earlier than September 30, 1990, if the Secretary of the Treasury, in a manner prescribed by regulations, reasonably estimates that the sum of the amounts received in the Treasury by reason of the petroleum, feedstock chemicals, and waste end taxes will equal or exceed $7.28 billion.

Waste end tax

A waste end tax identical to that included in S. 14 would be imposed under the bill (see description of S. 14 above). This tax would be effective from January 1, 1986, through September 30, 1990.

Corporate net receipts tax

Imposition of tax.—The bill would impose a tax on the net receipts of any corporation which has a gross receipts in excess of $50 million for any taxable year. The tax would be imposed at a rate of 0.083 percent of taxable net receipts, defined as the excess (if any) of gross receipts over the cost of goods sold by the taxpayer for the taxable year. The method for determining cost of goods sold for purposes of this tax would be established by Treasury regulations.

For purposes of the net receipts tax, all members of a controlled group of corporations would be treated as one taxpayer. A controlled group would be determined using a 50-percent test without regard to the special rules regarding insurance companies (sec. 1563(a)(4)) and tax-exempt employees' trusts (sec. 1563(e)(3)(C)). A similar rule would apply, under Treasury regulations, to trades or businesses (whether or not incorporated) which are under common control. The tax would apply to unrelated business taxable income (within the meaning of Code sec. 512) of a tax-exempt organization, but only when gross receipts from unrelated trades or businesses exceeded $50 million.

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[31] As a result of a clerical error, an identical bill was also introduced as S. 607.

Effective date.—The net receipts tax would be effective for taxable years beginning after December 31, 1985.

Termination date.—The tax would not apply to any taxable year beginning after December 31, 1990.

Trust fund provisions

The trust fund provisions of the bill are identical to those of S. 51, as reported by the Committee on Environment and Public Works (see description of S. 51 above.) Thus, the bill would authorize general revenue appropriations to the Superfund of $44 million per year for fiscal years 1986 through 1990 and would retain the present law Superfund expenditure purposes.

The bill would termiante the authority to collect all Superfund taxes when, and if, cumulative Superfund revenues (not including interest, cost recoveries, and fines) during the reauthorization period total $7.5 billion.

Non-tax provisions

The non-tax provisions of the bill are similar to S. 51, as reported by the Committee on Environment and Public Works. However, the bill also includes a specific cleanup schedule for Superfund sites, which sets a goal of completing remedial action at all facilities listed on the National Priorities List (as of the date of enactment), to the maximum extent practicable, within five years. This would be accomplished by commencing remedial investigations and feasibiliity studies for these facilities at a rate of 130 or more facilities per year, and commencing actual remedial actions, at an equivalent rate, beginning at 1986. The bill would also set a goal of adding 1,600 new facilities to the National Priorities List by January 1, 1988, with investigations and studies of these sites being conducted at a target rate. Finally, the bill would require that preliminary assessments of all facilities listed on the Emergency and Remedial Response Information System (ERRIS) list as of the date of enactment be completed by January 1, 1987.

D. S. 886 (Sen. Proxmire)—"Hazardous Waste Reduction Act of 1985"

Overview

S. 886 ("The Hazardous Waste Reduction Act of 1985"), introduced by Senator Proxmire, would impose a tax on all forms of land and ocean disposal of hazardous waste which are regulated by the Resource Conservation and Recovery Act (RCRA). The tax would be imposed at a rate of $20 per ton on disposal methods other than injection wells, which would be taxed at a $5 per ton rate. Hazardous waste rendered nonhazardous within one year of receipt at a treatment, storage, or disposal facility would receive a full credit for the tax paid on such waste. The tax is intended to raise $286 million per year, as part of a comprehensive Superfund financing package. The tax is intended to create economic incentives for the treatment, as opposed to land disposal (other than underground injection), of hazardous waste.

Imposition of tax

The bill would impose tax on (1) the receipt of taxable hazardous waste in any qualified hazardous waste management unit, (2) the receipt of taxable hazardous waste for export or for ocean disposal (pursuant to a permit under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1412)), and (3) the placement of any hazardous wastes in any other facility or location. Taxable hazardous waste would mean hazardous waste (including "toxic" and "characteristic" waste) that is identified or listed under section 3001 of the Solid Waste Disposal Act (SWDA) as of the date of enactment of the bill, and which is not thereafter delisted. The term "hazardous waste" would have the same meaning provided by section 1004 of the SWDA and the regulations thereunder. Thus, substances (including household wastes) which are not treated as hazardous wastes under section 1004 would not be subject to tax. If EPA lists or identifies additional hazardous wastes under section 3001 of the SWDA after January 1, 1985, then EPA would be required simultaneously to transmit to Congress recommendations concerning the taxation of such waste.[32]

A qualified hazardous waste management unit is defined as (1) the structure in or on which hazardous waste is placed, which structure isolates the hazardous waste within a qualifying treatment, storage, or disposal facility, or (2) if the waste is not placed in or on a structure, the smallest area of land on or in which hazardous waste is placed. Qualifying facilities are defined as those operating pursuant to a permit or interim status under sec. 3005 of the SWDA, or under the an equivalent State program authorized by sec. 3006 of that Act.

The tax would not apply to placement of hazardous waste on the premises of the person generating the waste, if the wastes are held for a period shorter than that which would require the generator to obtain a permit under the SWDA (generally 90 days). Further, this tax would not apply to a waste generator who generates less than 100 kilograms of hazardous waste in any calendar month (small quantity generators). In addition, the tax would not apply to facilities or locations (including wastewater storage or treatment tanks) which are exempt from the permit, interim status, and manifest requirements under subtitle C of the SWDA, as in effect on the date of enactment of the bill.

Tax rates

General rate.—The tax would be imposed at a rate of $20 per ton for taxable hazardous waste disposed of by any method other than underground injection. This rate would apply to all other forms of land disposal or storage (including landfills, surface impoundments, waste piles, and land treatment), as well as to treatment facilities which do not render waste nonhazardous within one year of receipt (see discussion of exemptions from tax, below). The $20 per ton rate would also apply to export or ocean disposal and to the placement of taxable hazardous waste at non-RCRA facilities, including hazardous waste treated or disposed of in violation of RCRA permits.

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[32] The bill further specifies that, in the case of solid wastes required to be studied under section 8002(f) or (p) of the SWDA, no tax could be imposed unless provided by legislation.

Special rate for underground injection.—A $5 per ton tax rate would apply to taxable hazardous waste injected into an underground well that is operating pursuant to a permit (or interim status) under the SWDA, and for which a permit is also in effect under part C of the Safe Drinking Water Act. The term "underground injection well" has the same meaning as in the Safe Drinking Water Act and the regulations promulgated thereunder.

Adjustment of tax rates.—The bill directs the Treasury Department to adjust tax rates, beginning in 1986, if necessary, to ensure the receipt of anticipated revenues. Under this provision, before October 1, 1986 and each subsequent year of the reauthorization period, the Treasury would be required to estimate the actual amount of revenues to be derived from the tax during the fiscal year beginning that October 1. (These estimates could be based on the prior experience of the tax, together with other relevant information.) If the estimated fiscal year revenues are less than $286 million, Treasury would be required to increase the tax rates for that fiscal year by a percentage which Treasury estimates would result in $336 million of revenues during the fiscal year. This adjustment would apply proportionately to the general $20 tax rate and the $5 tax rate for disposal by underground injection.[33]

Exemptions from tax

As indicated above, various categories of wastes (including small generator wastes, mining wastes, temporarily stored hazardous wastes, and effluents discharged under Clean Water Act permits) would be excluded from the definition of taxable hazardous waste under the bill. The bill also provides the following exemptions from otherwise applicable tax:

Treatment or conversion of hazardous waste.—An exemption from tax (or a credit for tax paid) would be allowed for the qualified treatment or conversion of taxable hazardous waste which is completed within one year of after the first taxable receipt or placement of the waste.[34] Qualified treatment or conversion would include any method, technique, or process which changes taxable hazardous waste into a substance which is no longer a taxable hazardous waste. The exemption would not apply to the application of waste onto, or its incorporation into, the soil surface ("land treatment"), or to any method which violates any substantive requirement of Federal or State law relating to the management of taxable hazardous waste, including requirements relating to dust suppression and to hazardous waste used as a fuel. The exemption also would not apply to qualified wastewater treatment facilities; these facilities are the subject of a separate exemption (discussed below).

The treatment or conversion exemption would generally take the form of a credit (or refund) for tax paid by the person accomplishing the treatment or conversion at the time that the hazardous waste was originally received at the qualified management unit (assuming that no previous credit is allowable to the same person for the same waste). This credit (or refund) would be allowed in the same manner as for an overpayment of the tax. If the qualified treatment or conversion is completed before the time for payment of tax, no tax would be imposed on the relevant waste.

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[33] The adjustment to a $336 million revenue level appears to be designed to compensate for earlier revenue shortfalls and to ensure that aggregate revenues are at least equal to the originally intended level.

[34] The Treasury would promulgate rules for applying the one-year limitation to fungible hazardous waste.

Wastewater treatment facilities.—An exemption would be provided for certain wastewater treatment facilities that have a permit in effect under section 402 of the Clean Water Act, and that are required to comply with ground water monitoring requirements generally applicable to facilities permitted under section 3005(c) of the SWDA. A qualified wastewater treatement facilities is defined as a surface impoundment which contains treated wastewater during the secondary or tertiary phase of biological treatment, or which holds treated wastewater between treatment and discharge. Effective November 8, 1988, this exemption would be limited to facilities that are in compliance with the minimum technological requirements of the SWDA (sec. 3004(o)(1)(A)), or that meet the SWDA requirements relating to interim status surface impoundments.

Certain Superfund responses.—No tax would be imposed on the receipt or placement of hazardous waste in the course of carrying out any removal or remedial action under CERCLA, provided that (1) the removal or remedial action is carried out in accordance with a plan approved by the EPA or the State, and (2) the release or threatened release which caused the removal or remedial action occurred before October 1, 1985.

Movement from closed interim status facilities.—No tax would be imposed on waste removed from a facility operating with interim status under the SWDA, if such removal is pursuant to an EPA order closing the facility, and the waste is subsequently received at a facility holding a permit under the SWDA (or an equivalent State program).

Procedure and administration

Liability for tax.—The tax would be paid by the owner or operator of a qualified hazardous waste management unit; by the person holding the permit for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972; or, in the case of export, by the person exporting the taxable hazardous waste. In the case of other placements of taxable hazardous waste, tax would be imposed on the person placing the waste in the relevant facility or location.

Timing of payment.—The tax would be due at the close of the calendar quarter during which the waste became subject to tax.

Credits for prior payment.—Under Treasury regulations, if tax is imposed with respect to any waste, and a second tax is subsequently paid upon the receipt of the waste at a qualified management unit (or paid for wastes that are exported or burned at sea), then a credit or refund would be allowed to the person who paid the first tax. The amount of this credit would be limited to the lesser of the tax imposed on the first taxable event or the tax paid by reason of the second event. Such a credit (or refund) would be treated in the same manner as an overpayment of tax; however, no interest would be paid on credited (or refunded) amounts.

If tax is first imposed upon the receipt of taxable hazardous waste at a surface impoundment, and the waste is later received at an underground injection well, a credit (or refund) would be allowed for the amount by which the tax imposed upon receipt at the surface impoundment exceeds the tax paid upon receipt at the underground injection well (i.e., $15 per ton at the unadjusted tax rates). Thus, the net tax on waste stored for more than a year prior to underground injection would be $10 per ton ($20 plus $5 minus $15).

Credits or refunds would also be allowed where tax is paid with respect to waste later subjected to qualified treatment or conversion processes (see discussion of treatment or conversion exemption above). This credit would not be allowed to duplicate an earlier credit received under the rules described in the preceding paragraphs.

Information reporting and recordkeeping requirements.—The bill would require persons subject to tax to keep records and to comply with rules and regulations prescribed by the Treasury Department to ensure proper assessment and collection of the tax. The Treasury would be directed to consult with the EPA and the Army Corps of Engineers to ensure that records, statements, and returns for tax purposes are consistent, to the extent possible, with the reports required to be submitted to the EPA under the Solid Waste Disposal Act, the Safe Drinking Water Act, and the Marine Protection, Research, and Sanctuaries Act of 1972. As part of this coordination, the Treasury could require any person who is required to maintain records under those Acts to submit copies of such records (or reports) or otherwise to make them available to the Treasury.

Allocation to Superfund

Revenues from the tax (technically, amounts equivalent to these revenues) would be deposited in the Superfund under the appropriate CERCLA provision.

Effective date

The tax would be effective for hazardous waste received, placed, or exported on or after January 1, 1986.

Termination date

The tax imposed by the bill would expire on September 30, 1990.

Studies

The bill would require the Secretary of the Treasury to submit to Congress, not later than April 1, 1986, a report on the implementation of the waste end tax. Additionally, not later than January 1, 1987, the Secretary of the Treasury would be required to submit to Congress recommendations (if any) for a waste end tax that would (1) raise $286 million per year, and (2) be designed to discourage the disposal of hazardous wastes in an environmentally unsound manner (and to accomplish this with maximum administrative feasibility).

E. S. 955 (Sens. Mitchell and Chafee)—"Superfund Revenue Act of 1985"

Overview

This bill is intended to raise $7.5 billion for the Superfund (not including interest and recoveries) over a five-year period, from the following revenue sources: (1) an extension of the petroleum tax (Code sec. 4611) at a 1.13 cent per barrel rate; (2) an extension of the chemical feedstocks tax (sec. 4661) on the same taxable substances as under present law, but at higher rates that are indexed for inflation (beginning in 1986); (3) a single-rate tax on the treatment, storage, disposal, or export of hazardous waste (also indexed for inflation); and (4) a tax on corporate earnings and profits (as defined by the bill) in excess of $5,000,000 per year. Superfund financing would also include $187.5 million per year of general revenue appropriations.

Petroleum tax

The bill would increase the present law environmental excise tax on petroleum from 0.79 cents per barrel tax to 1.13 cents per barrel, effective from October 1, 1985. This tax would apply through September 30, 1990.

Tax on feedstock chemicals

Tax rates

The bill would impose tax on the same chemical feedstocks that are taxed under current law (sec. 4661). However, tax rates would be set at the lower of 1½ percent of estimated wholesale price or $5.35 per ton, in accordance with the following table (Table 9):

Table 9.—Chemical Tax Rates Under Present Law and Proposed Rates Under S. 955

[Tax rates per ton, before any inflation adjustment]

Substance	Present law	Proposed rates
Organic substances:		
Acetylene	$4.87	$5.35
Benzene	4.87	5.35
Butadiene	4.87	5.35
Butane	4.87	4.87
Butylene	4.87	5.11
Ethylene	4.87	5.35
Methane	3.44	3.44
Napthalene	4.87	5.35
Propylene	4.87	5.35
Toluene	4.87	5.14
Xylene	4.87	5.35
Inorganic substances:		
Ammonia	2.64	2.64
Antimony	4.45	5.35

Table 9.—Chemical Tax Rates Under Present Law and Proposed Rates Under S. 955—Continued

[Tax rates per ton, before any inflation adjustment]

Substance	Present law	Proposed rates
Antimony trioxide	3.75	5.35
Arsenic	4.45	5.35
Arsenic trioxide	3.41	5.35
Barium sulfide	2.30	5.35
Bromine	4.45	5.35
Cadmium	4.45	5.35
Chlorine	2.70	3.03
Chromite	1.52	1.52
Chromium	4.45	5.35
Cobalt	4.45	5.35
Cupric oxide	3.59	5.35
Cupric sulfate	1.87	5.35
Cuprous oxide	3.97	5.35
Hydrochloric acid	0.29	0.93
Hydrogen fluoride	4.23	5.35
Lead oxide	4.14	5.35
Mercury	4.45	5.35
Nickel	4.45	5.35
Nitric acid	0.24	3.03
Phosphorus	4.45	5.35
Potassium dichromate	1.69	5.35
Potassium hydroxide	0.22	5.35
Sodium dichromate	1.87	5.35
Sodium hydroxide	0.28	2.79
Stannic chloride	2.12	5.35
Stannous chloride	2.85	5.35
Sulfuric acid	0.26	0.77
Zinc chloride	2.22	5.35
Zinc sulfate	1.90	5.35

Starting in 1986, the rates specified in the table would be adjusted for inflation. In the case of organic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic organic chemicals, for the 12-month period ending in September of the preceding year, exceeds the comparable average of the index for the 12-month period ending in September 1984. In the case of inorganic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic inorganic chemicals for the 12-month period ending in September of the preceding year, exceeds the comparable averages for the 12-month period ending in September 1984.[35]

Effective date

The amendments to the tax on feedstock chemicals would be effective on October 1, 1985.

Termination date

The tax would expire on September 30, 1990.

Tax on hazardous waste

Imposition of tax

The bill would impose a tax on (1) the receipt of hazardous waste at any qualified hazardous waste facility, and (2) the export of hazardous waste.

Hazardous waste subject to the tax would include any waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (SWDA) as in effect on the date of enactment of the bill, other than waste the regulation of which has been suspended by Congress.

Qualified hazardous waste facilities would mean any facility (including disposal and other facilities): (1) which qualifies for authorization to operate under section 3005(e) of the SWDA, *or* (2) which has a valid permit under section 3005 of that Act (or a State program authorized by section 3006 of the SWDA).

Tax rates

The tax would be imposed at a flat rate of $3.65 per metric ton (approximately 1.1 English tons) of hazardous waste subject to the tax.

The tax would generally be imposed on the full amount of waste received at a hazardous waste facility. However, in the case of onsite waste water treatment facilities, the taxpayer could elect to have tax imposed on the amount of hazardous waste generated at the site (which excludes non-hazardous materials added to the waste stream prior to treatment).

The tax rate would be adjusted for inflation, beginning in calendar year 1986, by increasing the $3.65 tax rate by the percentage (if any) by which the GNP implicit price deflator for the preceding calendar year exceeds the deflator for calendar year 1984.

Procedure and administration

Liability for tax.—The tax would be imposed on the owner or operator of the qualified hazardous waste facility, or, in the case of export, on the exporter of hazardous waste.

Avoidance of double tax.—The bill specifies that no tax is to be imposed upon the receipt or export of hazardous waste directly from one or more qualified hazardous waste facilities.

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[35] Tax rates would not be reduced below the levels shown in Table 9, even if the producer price index declines.

Effective date

The tax would be effective for hazardous waste received or exported after September 30, 1985.

Termination date

The tax would terminate on September 30, 1990.

Environmental tax on corporate earnings and profits

Imposition of tax.—The bill would impose an environmental tax equal to .003 (i.e., 0.3 percent) of corporate earnings and profits in excess of $5,000,000 in any taxable year. This tax would be imposed on all corporations other than S corporations, regulated investment companies (RICs), and real estate investment trusts (REITs).

In computing earnings and profits for purposes of the tax, no reduction would be allowed for any distribution made to a shareholder after September 30, 1985, with respect to the corporation's stock. If a corporation has an earnings and profits deficit for any taxable year after the effective date, then such deficit would be used to reduce its earnings and profits (if necessary below zero) for the next taxable year (i.e., perpetual carryforward).

The environmental tax on corporate earnings and profits would be in addition to, and independent of, any other tax. The tax could not be reduced by otherwise available income tax credits.

Effective date.—The tax on corporate earnings and profits would be effective for taxable years ending after September 30, 1985. For taxable years which include October 1, 1985, tax would be imposed on that portion of earnings and profits which is proportional to the number of days in the corporation's taxable year which falls after September 30, 1985.

Termination date.—The tax would not apply to any taxable year ending after September 30, 1990.

Trust fund provisions

The bill would allocate revenues from each of the taxes described above (technically, amounts equivalent to these revenues) to the Superfund, under the appropriate CERCLA provision. In addition, appropriations of $187.5 million per year would be authorized from general revenues, for fiscal years 1986 through 1990.

F. S. 957 (Sens. Bentsen and Wallop)—"Superfund Excise Tax Act of 1985"

Overview

This bill would impose a tax on the sale, lease, or import of tangible personal property by the manufacturer or importer of the property, with revenues from this tax being allocated to the Superfund. No tax would be imposed on manufacturers or importers with less than $100,000 of annual gross receipts from the otherwise taxable sale, lease, or import of tangible personal property. A credit against the tax would be allowed for a proportionate fraction of direct material purchases during the taxable year (i.e., the tax would function similarly to a value added tax). Exports of taxable property would be exempt, as would sales or imports by tax-exempt entities.

The rate of tax is not specified by the bill. The Secretary of the Treasury is required to determine the tax rate which would raise the amount of revenue necessary to finance the Superfund in any fiscal year.

Imposition of tax

The bill would impose tax on (1) the sale or leasing of tangible personal property in the United States, and (2) the importing of tangible personal property into the United States, by any taxable person in connection with a trade or business. The tax would be imposed upon the manufacturer of tangible personal property (in the case of sale or leasing) or (in the case of imports) on the importer of such property.

For purposes of the tax, "manufacturing" would be defined as activities in which labor or skill is applied by hand or machinery to produce a new, different, or useful substance or acticle of tangible personal property, including activities such as making, fabricating, processing, refining, mixing, and compounding. The bill further specifies that manufacturing is to include the production of raw materials. Manufacturing would not include services incidental to the storage or transportation of property; the incidental preparation of property by a retailer or wholesaler (including routine assemblage); or the production (i.e., growing, harvesting, etc.) of unprocessed agricultural products (except timber) or unprocessed food products.

The tax would be limited to manufacturers or importers with an aggregate taxable amount of $100,000 or more for the relevant taxable period (generally, the taxable year). For purposes of this rule, all members of affiliated groups of corporations (under sec. 1504(a)) would be treated as one taxpayer. Under Treasury regulations, all trades or businesses which are subject to common control (whether or not incorporated) would be treated as a single taxpayer.

Tax rate and taxable amount

The tax would be imposed on the sale price charged by the seller of property to the purchaser thereof, including all items payable to the seller, but excluding the tax imposed under the bill, and any separately stated transportation charges. In the case of leases, the tax would be imposed on gross lease payments received during the taxable period. Imports would be taxed according to their customs value plus customs and other duties. If no such value exists, then tax would be imposed on the fair market value. Any taxable amount would be treated as received at the time that the taxpayer would recognize such amount under its general method of accounting.

A credit would be allowed against the tax for purchases of direct materials during any taxable period.[36] This credit would be equal to the excess of (1) purchases of direct materials during the taxable period, over (2) the amount of such purchases divided by the sum of 1 plus the applicable rate of tax under the bill, with this excess further being reduced by an amount equal to the tax rate times $100,000. Excess credits under this provision would be treated as overpayments of tax arising on the due date of the relevant return (if later, the date on which the return is actually filed).[37]

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[36] The bill does not specifically define "direct materials." It appears that the term would include tangible personal property and raw materials used directly to manufacture taxable property and property that otherwise would be taxable for the export exemption. Taxpayers that sell or lease property for export could not include separately stated transportation charges in computing the credit.

The bill does not specify the applicable rate of tax. Tax would be imposed at the rate which the Secretary of the Treasury determines to be necessary to collect a sufficient amount of revenue to finance the Superfund for the fiscal year in question.[38]

Exemptions

No tax would be imposed on any property exported from the United States. Additionally, no tax would be imposed on the sale or importation of property (1) by the United States or any State or political subdivision (including the District of Columbia and U.S. possessions), or any agency or instrumentality thereof, or (2) by any organization that is exempt from Federal income taxation, except to the extent of transactions associated with an unrelated taxable businesses.

As indicated above, no tax would be imposed on persons having an aggregate taxable amount of less than $100,000 for any taxable period.

Procedure and administration

The taxable period for any taxpayer would generally be the taxpayer's taxable year for income tax purposes; if no such year exists, the calendar year would be used. A taxpayer could also elect to use a quarterly taxable period, or any other period allowed by Treasury regulations. The Treasury regulations could further require quarterly deposits of estimated tax for any taxable period. Returns would be due the first day of the second calendar month after the end of any taxable period (e.g., February 1 for a calendar taxpayer year).

Allocation to Superfund

Revenues from the tax (technically, amounts equivalent to these revenues) would be allocated to the Superfund under the appropriate CERCLA provision.

Effective date

The tax would be effective for taxable periods beginning after September 30, 1985.

Termination date

The bill does not provide a specific termination date for the manufacturer's tax. However, the Secretary of the Treasury presumably would set a zero rate of tax after Superfund revenue needs were satisfied.

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[37] It appears that the intent of this credit mechanism is to impose tax on value added in the manufacture of tangible personal property in excess of $100,000.

[38] Statements by the sponsors of the bill indicate that the tax rates would be determined legislatively, depending on the overall funding needs of the Superfund and the other taxes included in the funding base. See 130 Cong. Rec. S4410 (statement of Sen. Bentsen), S4412-4413 (statement of Sen. Wallop), April 18, 1985.

VII. ISSUES RELATING TO THE REAUTHORIZATION OF SUPERFUND

A. Funding Level of the Superfund Program

Two main issues which arise in considering the appropriate level of funding for the Superfund program are: (1) the ultimate cost of cleaning up all the sites which pose an environmental threat; and (2) the rate at which these sites should be cleaned up.

The Environmental Protection Agency ("EPA") recently estimated that the Federal cost of remediating all current and future sites on the National Priorities List will total $9.1–14.5 billion in 1983 dollars.[39] EPA's best estimate which incorporates the most likely assumptions and best available data is $11.7 billion. Some have argued that these estimates are too low because of optimistic assumptions concerning the total number of hazardous sites which exist and the proportion of these which will be cleaned up by private parties. The General Accounting Office has reviewed this estimate and concluded that the cost of cleanup could be as high as $26 billion.[40] The Congressional Office of Technology Assessment estimates that as many as 10,000 sites will require Superfund cleanup at an estimated cost of $100 billion over the next 50 years.[41] Thus there is at present a large amount of uncertainty about the level of Superfund expenditures required to clean the nation's hazardous waste sites.

The second issue related to funding levels is the rate at which the sites should be cleaned up. Hazardous waste cleanup projects require lengthy analysis, planning, preliminary engineering, and design work. This is particularly the case at sites where groundwater contamination is involved. Given the long lead time necessary for implementing site cleanups, the EPA has stated that it will not be able to spend productively more than $5.3 billion over the 1986–1990 period.

The Congressional Research Service ("CRS") analyzed a number of alleged obstacles to a more rapid program of hazardous waste cleanup including shortages of analytical laboratory capacity, experienced personnel, and permitted storage, treatment, and disposal facilities. CRS concluded that the main difficulty in accelerating the rate of Superfund cleanup is likely to be inadequate State matching funds rather than a lack of adequate laboratory capacity, personnel, or waste management facilities.[42]

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[39] U.S. Environmental Protection Agency, "Extent of the Hazardous Release Problems and Future Funding Needs CERCLA section 301(a)(1)(C) Study" (December 11, 1984), pp. 4–10.

[40] General Accounting Office, *EPA's Preliminary Estimates of Future Hazardous Waste Cleanup Costs are Uncertain, RCED-84-152* (May 7, 1984).

[41] U.S. Congress, Office of Technology Assessment, *Superfund Strategy*, (March 1985).

[42] U.S. Congress, Congressional Research Service, *Superfund: How Many Sites? How Much Money?* (March 6, 1985).

It has been suggested that given the uncertainty about the rate at which the Superfund can be spent, it may be desirable to terminate the Superfund taxes if a large balance builds up in the fund. The 1980 Act, for example, contains a trigger mechanism which temporarily suspends the feedstock tax if the Superfund balance exceeds $0.9 billion and would not fall below $0.5 billion in the subsequent year. This type of trigger could guard against excessive prepayment into the Superfund.

On the other hand, opponents of this type of trigger argue that it effectively would enable the EPA to control the level of Superfund taxes by manipulating the rate at which outlays are made from the Superfund. In addition, taxpayers would be less certain about their potential Superfund tax liability over the 5-year reauthorization period. It is also argued that without the assurance of adequate revenues, preliminary planning and design activities will be hampered, and the ultimate schedule of cleanup could be significantly delayed. Finally, given the lead time necessary to plan cleanup projects, the Superfund tax might be triggered off just as the demand for Fund resources sharply rises in the construction phase of the program.

B. General Revenue Share of Superfund Expenditures

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 established an excise tax on certain chemical feedstocks and petroleum as the primary revenue source for the Federal Superfund; through fiscal 1984, appropriations from general revenues have amounted to 12.2 percent of revenues from taxes and general appropriations. The Superfund was intended to cover the cost of cleaning sites only where liability could not be traced to a private party.

Payers of the feedstock tax have challenged the equity of this tax. First, the economic beneficiaries of the prior use of cheap waste disposal practices include: past customers of products fabricated in waste producing plants, past stockholders, and past workers. However, the burden of the Superfund feedstock tax falls on current customers, shareholders, and workers. Thus, there may be no direct connection between past beneficiaries of cheap waste disposal practices and the individuals who currently bear the burden of the feedstock tax. Second, companies who pay to remediate all sites for which they are responsible (whether voluntarily or under court order) are, in effect, taxed twice under the feedstock tax. Third, the current excise tax is assessed on chemical feedstocks rather than on the actual hazardous wastes which are commonly found in abandoned disposal sites. Companies outside of the chemical industry that generated these hazardous wastes are not directly taxed under current law. Even if the disposal of hazardous wastes were taxed, as some have suggested, there would be no direct link between current taxpayers and past waste disposers.

On these grounds, it can be argued that general revenues should finance a larger share of Superfund expenditures. Unlike many of the other trust funds supervised by the Treasury (e.g., the airport and airway, highway, and inland waterway trust funds), the payers of Superfund taxes do not directly benefit from the facilities which are built and maintained by the Superfund. In Western Europe, general revenue financing is the approach generally followed for funding the remediation of abandoned waste sites.

Advocates of the feedstock tax argue that it is appropriate and equitable to place the financial burden of cleaning up hazardous waste sites on the industries responsible for creating the problem.[43] This approach has been followed in other instances where Congress has made the judgment that responsibility for a present problem or condition more properly attaches to a particular segment of the economy rather than the entire body of taxpayers who provide general revenue. For example, under the Black Lung Benefits program, benefits to diseased coal miners and survivors are financed by an excise tax on current coal production. Also, under the Surface Mining and Reclamation Act, reclamation of former surface mining sites is financed by a fee on coal production. Finally, it is argued that in view of the size of the Federal budget deficit it would be irresponsible to finance a significant amount of hazardous waste cleanup from general revenues.

In light of the Federal budget deficit, as an alternative to general revenue appropriations, a number of broad-base tax alternatives have been proposed to finance a portion of the Superfund. These proposals include corporate taxes that would be computed on the basis of net receipts, manufacturing value added, and earnings and profits (see below). Such taxes would spread the cost of cleanup broadly over all corporations.

C. Chemical Feedstock Tax

CERCLA imposed an excise tax on 42 chemical feedstocks and on petroleum. The main criterion for determining which feedstocks would be subject to tax was the prevalence of hazardous wastes derived from these feedstocks. The basic feedstock tax rates were set at $4.87/ton for petrochemicals, $4.45/ton for inorganic chemicals, and $0.0079/barrel for petroleum.[44] These rates were necessary to achieve a $1.6 billion Superfund program over five years and to allocate 65 percent of the tax burden to petrochemicals, 20 percent to inorganic chemicals, and 15 percent to petroleum. This allocation was based on the respective proportions of derived wastes found in hazardous waste sites. In addition, the feedstock rates were limited to 2 percent of wholesale price (based on data available in 1980).

Exemptions were granted for methane or butane used as a fuel; ammonia, sulfuric acid, and nitric acid used in the production of fertilizer; sulfuric acid produced as a byproduct of air pollution control; and chemicals derived from coal. In addition, section 1019 of the Deficit Reduction Act of 1984 clarified that exemptions also would apply to specified feedstocks used in the production of certain fuels and transitory chemicals which occur in metal refining processes.

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[43] According to one study, the chemical and allied products industries are responsible for producing 84 percent of the contaminants found at national priority list sites. See: Management Analysis Center, Inc. *Financing Superfund: An Analysis of CERCLA Taxes and Alternative Revenue Approaches* (June 1984), p. 38.

[44] Compounds (e.g., arsenic trioxide) were taxed at a fraction of the rate imposed on their constituents (i.e., arsenic) based on percentage composition.

The feedstock tax has been criticized as being arbitrary and potentially damaging to industry. Under current law, feedstock taxes are not based on either the degree of hazard associated with wastes derived from these feedstocks or the volume of hazardous waste produced from these chemicals. Thus, it is argued that a tax on the disposal of certain hazardous wastes more equitably places the burden of the tax on the wastes which are being cleaned up by the Superfund.

On the other hand, proponents of the feedstock tax argue that it is successful in accomplishing the stated goal of financing the Superfund program through taxes paid by the industries that account for most of the problem which led Congress to establish the program. According to a report prepared for the EPA, 71 percent of all regulated hazardous wastes are produced by the chemical and petroleum refining industries which are the primary payors of the feedstock tax.[45] Most hazardous wastes or substances are made from the feedstocks subject to tax; the vast majority of those substances ranked highly hazardous at waste sites are taxed feedstocks or their derivatives.

D. Effect of Feedstock Tax on Trade

Under current law, imports of feedstocks are subject to tax, as are imports of petroleum and petroleum products, but imports of derivatives produced from taxed feedstocks are not subject to tax. It is argued that the the feedstock tax subsidizes imports derived from taxed chemicals, and encourages U.S. chemical companies to manufacture offshore. Imported products that are derived from feedstocks that would have been taxable if produced or sold in the Unites States escape tax and are, in effect, subsidized by the Superfund tax. For example, batteries consist mostly of lead and lead oxide. Lead oxide is a taxable feedstock; however, imported batteries are not taxed. Thus, disregarding transportation costs, imported automobile batteries (made with untaxed lead oxide) have a cost advantage over those produced in the United States. Similarly, exports of U.S.-produced batteries suffer from a cost disadvantage relative to foreign-produced batteries.

While the feedstock tax could, in theory, harm U.S. trade, it is unlikely that the actual damage to the U.S. chemical industry is large. The maximum tax imposed by current law on any chemical is 2.0 percent of the manufacturing cost estimated in 1980. By comparison, the value of the dollar against a group of 11 major foreign currencies increased by about 10 percent over the last 6 months of 1984, effectively raising the price of U.S. chemical exports by that amount.[46] While some segments of the chemical industry are highly competitive, the recent growth in petrochemical imports appears to be attributable largely to the appreciation of the dollar against foreign currencies and to competition from plants established near low cost sources of natural gas in the Middle East and elsewhere.[47]

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[45] Westat, Inc., *National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981*, (April 1984).

[46] U.S. Congress, Congressional Research Service, Memorandum prepared for the House Committee on Energy and Commerce Subcommittee on Commerce, Transportation, and Tourism, (March 21, 1985), p. 7.

Since foreign manufacturers of chemical imports did not generate the wastes found in U.S. disposal sites, it is difficult to argue that they should pay to clean them up. (However, some chemical imports are used in manufacturing processes which generate hazardous wastes.) Without a doubt many environmental regulations (e.g., the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Solid Waste Disposal Act, the Occupational Safety and Health Act, etc.) raise the cost of manufacturing in the United States. However, Congress has not provided systematic trade relief to offset the effects of any such regulations or taxes which affect the costs of domestically produced goods.

Current law does not provide an exemption for feedstocks that are exported. Some argue that such an exemption is necessary to prevent U.S. producers of exported feedstocks from being adversely affected, vis-a-vis foreign producers of these materials, in their attempt to compete for the business of foreign purchasers. However, it can be argued that an export exemption would adversely affect U.S. purchasers of feedstocks, since they will have to compete against, for example, Canadian or Mexican manufacturers who would be able to purchase feedstocks on a tax-free basis. These foreign purchasers could ship derivatives back to the U.S. and set prices without having to take account of the tax paid with respect to U.S. purchasers and users of feedstocks.

E. Tax on Hazardous Waste

Several basic issues arise in the discussion of a tax on hazardous waste in the context of financing the Superfund program: incentive effects; predictability of revenues; administrative concerns; trade effects; and appropriate financing sources for the particular expenditures authorized under the program.

In analyzing the effects of proposed taxes on hazardous waste it is useful to distinguish between "disposal" and "generation" taxes. Under a waste disposal tax, wastes that enter the environment are subject to tax. Treatment, reclamation, and recycling of waste is exempt; however, residual wastes from these processes that enter the environment are subject to tax. Under a waste generation tax, the generation of waste, rather than its disposal, is subject to tax. S. 14 (Senators Moynihan and Bentsen) and S. 886 (Senator Proxmire) are structured generally as disposal taxes, while S. 955 (Senators Mitchell and Chafee) includes a generation-type tax on hazardous waste. The Administration's waste tax proposal can be viewed as a hybrid approach combining, in effect, a relatively low-rate generation tax on all hazardous waste with a surtax on certain types of disposal.

Incentive effects

A rationale for a disposal tax, like other pollution taxes, is that the market price of disposal does not reflect the full cost to society.

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[47] Data Resources, Inc., *Superfund and the International Competitive Position of the Chemical Industry*, testimony presented to the Subcommittee on Commerce, Transportation, and Tourism of the House Committee on Energy and Commerce, (March 21, 1985).

Even waste that is properly disposed of, in a facility regulated under the provisions of the Resource Conservation and Recovery Act (RCRA), may still pose some long-term risk to the public health and welfare. Accidental releases can occur in the transport of hazardous wastes and at disposal facilities. Property values around disposal facilities may be reduced. If the owner of a hazardous waste facility becomes insolvent, the cost of maintaining the facility is shifted to the government. Thus, in theory, disposal tax rates should vary with the degree of hazard associated with each type of waste and the environmental soundness of the disposal method employed. A disposal tax based solely on the social cost of waste disposal would generally exempt proper treatment and recycling of hazardous wastes and tax only the untreated hazardous residuals from these processes upon ultimate disposal.

A disposal tax, unlike a feedstock tax, has the effect of creating direct economic incentives for waste reduction and treatment. First, at the production level, there is an incentive to adopt manufacturing processes which generate smaller amounts of the more toxic, highly taxed wastes. Second, at the treatment stage, there is an incentive to recycle and otherwise reduce the volume of hazardous wastes which must be disposed. Finally, at the disposal stage, there is an incentive to use safer methods of waste disposal which are taxed at a lower rate. Thus, the tax, administered by the Internal Revenue Service, could supplement the environmental statutes administered by EPA in attempting to achieve environmental goals.

It is unclear, however, if adequate information exists about the degree of hazard of different wastes and the environmental soundness of alternative disposal methods to design a rational disposal tax. According to the Office of Technology Assessment (which supports the concept of a disposal tax) there is insufficient scientific data to determine whether deep well injection is a highly safe method of long-term disposal. A tax which provided lower tax rates or exemptions for certain types of treatment or disposal could increase the amount of waste flowing into less heavily taxed disposal and treatment methods. If these low tax rates and exemptions are based on inadequate scientific data, such a tax could actually increase the amount of environmental damage imposed on society by the disposal of hazardous waste. For example, under the Administration's proposal, deep well injection would in many cases be taxed at a lower rate than biological waste water treatment. The inability to define adequately hazardous wastes and to determine their relative harmfulness is the primary reason why countries such as France and Germany, which tax the discharge of pollutants into waterways, have not enacted taxes on hazardous waste disposal.

A waste generation tax would promote environmental policy by discouraging the generation of hazardous waste; however, unlike a disposal tax, it would not create an incentive or disincentive for any particular method of treatment or disposal. A waste generator's choice among treatment and disposal methods would be determined primarily by the costs of alternative technologies and EPA regulations, rather than by the tax Code.

Predictability of revenues

Twenty-three States currently employ or have employed some form of waste-based tax.[48] The General Accounting Office (GAO) recently studied the experience with waste-end taxes in New York, California, and New Hampshire, and concluded that [49]

> . . . the three states (1) have not collected the revenues they anticipated, (2) have not determined if the tax achieved its objective of encouraging more desirable waste management practices, and (3) were concerned that a similar federal tax may reduce state tax revenues or increase the incentive to illegally dispose of hazardous waste. In addition, GAO found that in order to implement similar federal waste-end taxes, more data are needed on the types and quantities of waste generated and the treatment, storage, and disposal methods used. These data are necessary to accurately estimate revenue, measure change in disposal practices, and assure compliance with the tax.

The revenue shortfalls in these States were 39 percent in California, 73 percent in New York, and 93 percent in New Hampshire. Florida replaced its waste-end tax with a feedstock tax in 1983 after discovering that administrative costs exceeded revenues.[50] The State experience with disposal taxes raises the issue that a revenue shortfall might also occur at the Federal level.

Part of the revenue shortfalls experienced at the State level are due to out-of-State disposal of wastes. This type of tax avoidance would not affect a Federal level disposal tax, except to the extent hazardous wastes are exported from the country. A second explanation is that most of the State disposal taxes have been enacted since 1980 and are relatively new. This "learning curve" syndrome may be responsible for the 80-percent revenue shortfall in the Federal disposal tax enacted in the CERCLA of 1980 to fund the Post-closure Liability Trust Fund.[51] A third cause of persistent revenue shortfalls is that the disposal tax creates incentives for waste management, both by legal and illegal means. California, in one year, experienced a 28-percent decline in reported waste, including a 66-percent decline in extremely hazardous wastes, after enacting a waste-end tax.[52] In combination with State level waste end taxes, a Federal disposal tax could raise the effective tax rate on disposal to the point where serious revenue shortfalls might occur at both levels of government.

At the State level, it appears that some of the hazardous waste reduction is due to "midnight" dumping, waste blending, questionable recycling and treatment operations, and under-reporting of waste volumes.[53] Under-reporting is particularly difficult to detect in the case of on-site disposal, since the waste producer and disposer are the same party. This could be a significant problem for a Federal waste-end tax because 96 percent of all hazardous waste are disposed of on site.[54] As a result, some argue that an improperly designed waste-end tax could seriously undermine compliance with the RCRA reporting requirements.

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[48] Fred C. Hart Associates, Inc. "CERCLA Funding Options," pp. 21-22.

[49] GAO, *State Experiences With Taxes on Generators or Disposers of Hazardous Waste* (May 4, 1984), p. ii.

[50] ICF, Inc. "Briefing on CERCLA Tax Alternatives," prepared for the Environmental Protection Agency, part II, p. 14.

[51] According to the most recent IRS data, the post-closure tax raised an average of only $1.5 million per quarter in the first two quarters of fiscal 1984 relative to fiscal year budget estimates of $8 million per quarter and projections of $25 million per quarter when the tax was enacted in 1980.

[52] ICF, Inc. "Briefing on CERCLA Tax Alternatives," part II, p. 20.

[53] *Ibid.*, pp. 18-19.

Ultimately, there may be a conflict between the two major goals of a disposal tax—the provision of revenue for the Superfund program and the encouragement of proper treatment of hazardous wastes. To the extent that the tax applies only to those disposal practices which cause environmental harm and is successful in discouraging such practices, the revenues generated by the tax will decrease. However, the experience with the Superfund program inidcates that the revenue needs for cleaning up old sites are likely to increase over time.

Hazardous waste generation is a considerably larger tax base than hazardous waste disposal (because waste that is treated is not excluded). Thus, to raise an equal amount of revenue, a lower rate of tax is required if waste generation, rather than disposal, is subject to tax. At a lower tax rate, a waste generation-type tax is less likely to result in midnight dumping, and other causes of revenue shortfall, than is a disposal-type tax. Also, tax revenues from a generation-type tax are likely to be more stable than a tax imposed on particular types of disposal, since it is more difficult for taxpayers to reduce waste generation than it is to change disposal methods.

Administrative concerns

Some have questioned whether the current RCRA regulatory system is adequate for assesssing, collecting, monitoring, and enforcing a waste-end tax. Notwithstanding the RCRA regulatory system, every State that has adopted a waste-end tax has found it necessary to develop a separate reporting system.[55] The GAO concluded that current data were inadequate for determining the cause of the revenue shortfalls in the State programs, and the extent to which illegal disposal practices may have increased as a result of taxing hazardous waste.

Another lesson from the State experience is the relative high administrative cost of hazardous waste taxes. The current Superfund tax is imposed on 42 feedstocks and collected from approximately 600 taxpayers. On the other hand, a hazardous waste tax might be imposed on more than 430 wastes regulated under RCRA, and collected from approximately 5,000 on-site and off-site hazardous waste disposal facilities.[56] The Internal Revenue Service would be required to develop complex regulations covering the hundreds of substances involved, and specifying the taxation of numerous recycling, treatment, and disposal practices.

Further, it is not clear to what extent the RCRA regulatory system is adequate to provide the framework for the administration of a tax. For example, liability for an excise tax generally depends on the occurrence of a taxable event, but the RCRA system is geared to the prevention of certain events (i.e., illegal disposals) which are prohibited under that law. It is unclear at what point legal treatment and/or legal disposal would require the payment of a tax. Some proposed versions of a waste disposal tax would distinguish among storage, treatment, and disposal for purposes of defining the taxable event and whether or not the tax ever applied to a given volume of waste. However, the distinctions among these activities under present law are not always clear.

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[54] Westat Study.

[55] ICF, Inc., "Briefing on CERCLA alternatives," p. 26.

[56] Ibid., p. 12.

In addition, since RCRA allows approved State programs to administer the Federal requirements, it is unclear to what extent a Federal tax based on RCRA ultimately would be administered by the States, which could vary in their definition of terms and administrative practices.

Also, there is considerable controversy over the RCRA regulations which define hazardous wastes and various management practices, as indicated in the following statement:

> Industry and environmentalists alike, unhappy with much of what they already see, have challenged numerous regulations and are involved with EPA in lengthy negotiations over the way those regulations should ultimately read. The states, which administer RCRA, are finding their efforts hobbled because promised federal aid has not materialized.[57]

The Congress in 1984 adopted amendments to the RCRA which, *inter alia,* control certain questionable treatment practices under current law and expand the number of generators subject to the statute. If a disposal tax is tied to RCRA statute, the delays and frequent changes and challenges to EPA's regulations could make it difficult for the Internal Revenue Service (IRS) to administer the tax and issue its own regulations.

There may be difficulty in administering a disposal tax where waste is stored or treated in several waste management units prior to ultimate disposal. To prevent double taxation it generally will be necessary to provide a credit for tax paid when waste is moved from one unit to another. Problems may arise where the rate of tax varies depending on the type of treatment unit. Also, some types of treatment (e.g., neutralization of acids by the addition of a basic compound) may increase the amount of waste material. This could result in a tax credit for a larger amount of waste than was originally subject to tax. Such difficulties generally would be avoided by taxing the generation of hazardous waste (regardless of the method of treatment or disposal) rather than the disposal of such waste.

Another issue is whether a waste disposal tax should be levied on a wet weight or dry weight basis. For example, since wastes injected into underground wells are very dilute (90–99 percent water) taxing disposal on a wet weight basis increases the share of the tax burden paid by underground injection relative to other types of land disposal (if the same tax rate applies to both). If desired, the higher water content of wastes injected into underground wells could be accounted for by lowering the tax rate.

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[57] *Chemical Week,* "Getting RCRA Under Control" (June 9, 1982), p. 36.

Some oppose taxing disposal on a dry weight basis because of the added administrative burden. The cost of determining dry weight content has been estimated to be on the order of $20 per barrel, and can be more than the tax liability. As a result, some small waste generators currently do not bother to determine the dry weight content of their wastes and pay the existing post-closure tax on a wet weight basis. This may put small disposers at a disadvantage relative to large disposers (who have more uniform waste streams and in-house laboratory facilities).

As a practical matter, it may be quite difficult to develop comprehensive regulations prescribing the method of testing each of the hundreds of hazardous wastes to determine accurately the water content. For example, evaporative methods do not work for volatile organic wastes, while the Karl Fischer titration procedure is ineffective for testing wastes which contain significant amounts of acids or aldehydes. The regulations would also have to specify the frequency of sampling for continuous waste streams because water content may be variable. For example, in many waste water treatment facilities the diluteness of the waste stream surges after it rains because storm water and hazardous waste share a common sewer system. Finally, the regulations will have to establish certification procedures for dry weight analyses so that Internal Revenue Service ("IRS") agents can audit effectively taxpayers' claims regarding the dry weight of their taxable wastes.

Trade effect

Like the feedstock tax, a waste-end tax raises the price of manufacturing certain products in the United States. This effectively taxes exports and subsidizes imports of such products. However, depending on the tax rate imposed, the impact of a waste-end tax on individual businesses may be larger than the feedstock tax. The feedstock tax in current law was designed to prevent an increase in production costs of more than 2.0 percent; however, a waste-end tax could amount to a much larger percent of manufacturing costs for products whose fabrication involves large volumes of hazardous wastes. For example, a 1983 survey of off-site disposal charges, prepared for the EPA, found that the cost of landfill disposal for bulk wastes ranged from $28 to $100 per metric ton, and the cost of land treatment ranged from $5 to $24 per metric ton.[58] Thus a tax of $10 dollars per ton on land disposal, approximately the rate proposed by the Administration, could raise the cost of landfill by 10 to 36 percent, and the cost of land treatment by 42 to 200 percent. Consequently, waste-intensive products could be priced out of the market by imports from countries which have few, if any, regulations governing the disposal of hazardous waste. In these cases, U.S. manufacturers might shut down production and possibly establish manufacturing operations in other countries with weaker environmental standards. While some would welcome the export of industries which produce large volumes of hazardous wastes, the cost to the U.S. economy in terms of jobs and income must be considered.

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[58] Booz-Allen, *Review of Activities of Firms in the Commercial Hazardous Waste Management Industry*, 1983, report SW-894.

Appropriateness of revenue source

One of the arguments for a waste-end tax is that under a feedstock tax, the burden of financing the Superfund program is not properly placed on many of the industries which produced the hazardous wastes which currently pose an environmental threat. It is argued that since a waste-end tax could be more highly correlated with the generation of wastes found at Superfund sites, it is a more appropriate tax base.

Opponents of a waste-end tax respond that this argument is not valid to the extent that a large volume of waste is not subject to the tax. Wastes which are exported, generated by small generators exempt from RCRA, or are municipal wastes might not be subject to the tax. To the extent the tax is tied to the existing RCRA regulatory system, disposal which falls outside that system would not be subject to the tax. Further, those companies currently disposing of waste may not be the same companies that generated the waste found in Superfund sites.

F. Post-closure Liability Trust Fund

Under current law, the Post-closure Liability Trust Fund transfers legal liability of owners and operators of private disposal sites to the Federal government, provided that such sites are operated and closed according to RCRA requirements, and the EPA determines, 5 years after closure, that there is no substantial likelihood of future release. In exchange for assuming such liability, a tax of $2.13 per dry-weight metric ton was imposed on the disposal of hazardous wastes at qualified facilities. In effect, the post-closure tax is in lieu of an insurance premium for the coverage of all future claims arising from health and property damage caused by a hazardous waste facility.

The Administration proposal would repeal the Post-closure Liability Trust Fund enacted in 1980. There are several arguments for repeal. First, no estimate has been made of the liability which ultimately could be transferred to the Federal government under this provision. This liability is unlimited, and is governed largely by State and local laws which could change and could cover such items as medical expenses, pain and suffering, and income losses. Thus, the amount of claims against the Fund could be extremely large, and there is concern that the Post-closure Fund will have adequate resources to compensate the victims of even a few releases. This could necessitate a large tax increase or use of general revenues to pay these claims. Second, it is argued that the transfer of liability to the government diminishes the incentive to make these facilities safe over the long run. Under the scrutiny of private insurers (to avoid liability attributable to CERCLA and State tort laws), it is claimed that facility operators would continually strive to increase safety in order to keep premiums low. Little assurance that a future damage is unlikely results from a lack of release during the first five years after closure. Further, because storage facilities do not pay the tax, a storage facility which switched its status to that of a disposal facility just before closure could transfer liability to the Fund without ever having paid the tax. Other such mismatches between the tax and eligibility for transfer or liability may be possible; for example, a facility with an interim status permit may be required to pay the disposal tax but, if it never receives a final RCRA permit, will never be able to transfer liability to the fund. In addition, the Post-closure Fund does not relieve waste generators and transporters from legal liability for damages caused by waste deposited at a hazardous waste disposal facility.

On the other hand, it is argued that adequate private insurance is not available to cover the long-term liability of operators and owners of waste disposal facilities. Non-sudden environmental impairment insurance policies may be cancelled without cause by the insurer and are written to cover claims made during the coverage period of the insurance (claims-made basis) rather than when pollution actually occurs (occurrence basis). Such a policy would not cover any claim filed after the termination by the insurer even if the damage resulted from a release which occurred when the policy was in force. Thus, repeal of the Post-closure Fund could leave the public without protection where a policy is cancelled without cause or a facility operator becomes insolvent. Only the Federal government, it is argued, is capable of fully insuring these risks.[59]

As an alternative to repeal, one possibility is to the limit the liability of the Post-closure Fund to sites where the owner and operator are insolvent or the liability of a private party cannot be established. This would have the effect of making the Post-closure Fund similar to the Superfund which covers the cost of cleanup where responsible parties cannot be identified. In addition, the Post-closure Fund would supplement the Superfund by covering liability for damages for medical costs, income losses, pain and suffering, and other items which would not be compensated by the Superfund.

G. Natural Resource Damage Claims

Under present law States and the Federal government may be compensated for damages to government-controlled natural resources, such as parks and wildlife. These damage payments are in addition to actual costs of cleaning up hazardous substances. The Administration proposal provides that the Superfund may not be used to pay these damage claims. It is argued that the present law provision diverts scarce funds from the principal purpose of the program, which is to clean up hazardous waste sites and thus prevent further damage to individuals as well as natural resources. Further, it is argued that this provision exposes the Federal government to enormous potential liabilities for which no estimates have been made. Because regulations for damage assessment have not yet been issued, only four States have filed damage claims; however, claims from these States total $2.7 billion. Once the provision is fully implemented, the amount of claims eventually could be much larger. Thus, the Administration viewed it as unwise to allow these amounts, which do nothing to promote cleanup of hazardous substances, to be paid from the Fund.

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[59] See Department of the Treasury, *The Adequacy of Private Insurance Protection under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,* June 1983.

On the other hand, supporters of the current provision argue that the Superfund should be used to compensate all costs attributable to hazardous substance releases, and that cleanup costs are only a small part of the total costs which these releases impose on society. In many cases, governments whose natural resource are affected adversely will have to incur substantial expense to restore or replace these resources if they are not paid by the Fund, since solvent parties responsible for the damages often cannot be located. Of course, taxpayers finance these restoration or replacement expenditures through additional State and local taxes. Thus, if the Fund pays for these expenses, they are borne by the users and producers of chemicals and their derivatives rather than a broader group of taxpayers. Advocates of this provision argue that Fund payment of these damage claims results in a more equitable distribution of this burden.

H. Broad-base Tax Alternatives

Based on the Office of Technology Assessment Report and other studies indicating the enormous cost of ultimately cleaning all of the nation's serious hazardous waste sites, some have argued that either general revenues or a broadly based tax eventually will be necessary to finance the Superfund. A broad-base tax would likely cause less economic dislocation than an equal revenue tax on chemical feedstocks or hazardous waste disposal, the effects of which are concentrated in the chemicals industry.

The simplest broad-base Superfund tax alternative would be to impose a surtax on the existing income tax. (A corporate income tax surcharge of 10 percent was in effect during 1968 and 1969, and a surcharge of 2.5 percent was in effect in 1970.) However, it is argued that a surtax would be unfair because a number of corporations pay little or no corporate income tax under current law as a result of various tax preferences such as the investment tax credit and accelerated depreciation. Several alternative broad-base corporate income tax bases have been proposed: earnings and profits, net receipts, and manufacturing value added. Since these tax bases are extremely large, a very low tax rate would generate substantial revenue. Also, such taxes likely would produce relatively stable revenue compared to more narrow alternatives such as a tax on hazardous waste.

Tax on earnings and profits

S. 955, introduced by Senators Mitchell and Chafee, would impose an annual tax of 0.3 percent on corporate earnings and profits (before deducting distribuitions) in excess of $5 million. Earnings and profits, as defined in section 312 and in regulations, more closely reflect actual economic income than does taxable income since many tax preferences are disregarded. Another advantage of this proposal is that only a relatively small number of corporations would be liable for this tax (i.e., corporations with earnings and profits greater than $5 million). However, a disadvantage of this tax is that many corporations, including large corporation, do not currently compute earnings and profits on domestic operations on a regular basis. Thus, some additional recordkeeping might be required.

Tax on manufacturing value added

S. 957, introduced by Senators Bentsen and Wallop, would impose tax on valued added in manufacturing by corporations with over $100,000 of gross receipts. The tax would be similar to the value added taxes ("VATs") imposed in many Western European countries, except that it would not apply at the retail (or wholesale) level, and corporations would compute their tax liability using the "subtractive" rather than the "credit" method. Under the subtractive method, taxpayers deduct purchases of materials from sales of taxable commodities in computing their tax liability, rather than having to claim a credit for tax imposed on purchases of materials. Unlike the European-type VATs, the proposed tax does not allow a deduction for depreciation. Thus the tax base includes both pre-retail sales of manufactured goods and gross income from capital in the manufacturing sector. Consequently, tax is to some extent imposed on both consumption and gross income (i.e., profits plus depreciation) resulting from manufacturing.

One advantage of taxing value added is that, under the General Agreement on Tariffs and Trade ("GATT"), a VAT is regarded as a direct tax which may be rebated on exports and imposed on imports. Such border tax adjustmenets would minimize adverse trade consequences that might arise from Superfund taxes. A tax on manufacturers may also be regarded as an equitable method of financing the Superfund since most hazardous waste generation is associated with manufacturing operations. However, it could be argued that fairness would dictate that exports of manufactured goods not be exempted from Superfund tax because the production of goods for export generates the same amount of hazardous waste as the production of goods for domestic consumption.

A disadvantage of a value added tax is that it will impose additional recordkeeping and compliance costs. Under the manufacturing value added tax, unlike under current law, taxpayers would be required to separately account for (1) sales of manufactured goods, (2) exports, and (3) costs of goods sold attributable to taxable production. Treasury has estimated that implementation of a broad-base (credit method) VAT would cost $700 million per year and require 20,000 additional personnel. While the tax proposed in S. 957 is substantially narrower in scope than the VAT analyzed by the Treasury Department, administrative costs may nevertheless be significant.

Tax on net receipts

S. 596, introduced by Senator Bradley, would impose a tax of .083 percent on the net receipts of corporations with over $50 million of gross receipts. One advantage of taxing net receipts is that taxpayers are already required to compute net receipts for purposes of the corporate income tax so that compliance costs would be very low. Another advantage is that relatively few corporations would be subject to the tax: only about 10,000 corporations have gross receipts in excess of $50 million.

A disadvantage of the proposal is that the effect of the tax would be uneven across firms and industries. Rental and interest income are generally excluded in the calculation of net receipts and thus would be exempt from tax. Also inventory accounting methods differ between manufacturing and other sectors. Since cost of goods sold depends on the method of inventory accounting, the computation of net receipts (i.e. gross receipts minus costs of goods sold) will vary between industries. Some firms, such as utilities, do not maintain inventories. In such cases additional recordkeeping would be required. Further, the inventory regulations provide that the inclusion of certain items in costs of goods sold follows the accounting treatment on the firm's books. Thus, there could be inconsistent tax results under the net receipts tax depending on variations in income tax accounting practices.

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SUPERFUND REVENUE ACT OF 1985

MAY 23 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Finance,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 51]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 51)[1] to amend the Comprehensive Environmental Response Compensation, and Liability Act of 1980, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

A. Present Law

Hazardous Substance Response Trust Fund and Taxes

Under present law, excise taxes are imposed on crude oil and certain chemical feedstocks, and amounts equivalent to these taxes are deposited (together with appropriated funds) into the Hazardous Substance Response Trust Fund ("Superfund"). These amounts are available for expenditures incurred in connection with releases or threatened releases of hazardous substances and pollutants or contaminants into the environment. These provisions were enacted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), which established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous spills and uncontrolled hazardous waste sites.

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[1] S. 51, the Superfund Improvement Act of 1985, has been considered and reported favorably by the Committee on Environment and Public Works (S. Rep. 99-11; March 18, 1985). The bill was referred to the Committee on Finance for consideration of the revenue aspects of the legislation (title II and sec. 140).

An excise tax of 0.79 cent per barrel is imposed on the receipt of crude oil at a U.S. refinery, the import of crude oil and petroleum products, and the use or export of domestically produced crude oil (if the tax has not already been paid).

An excise tax is imposed on the sale or use of 42 specified organic and inorganic substances ("chemical feedstocks") if they are produced in or imported into the United States. The taxable chemical feedstocks generally are intrinsically hazardous or create hazardous products or wastes when used. The rates vary from 22 cents to $4.87 per ton. (See Table 1 for a list of current law tax rates on chemical feedstocks.)

The taxes generally are scheduled to terminate after September 30, 1985. However, the taxes would have been suspended during calendar years 1984 or 1985, if, on September 30, 1983, or 1984, respectively, the unobligated trust fund balance had exceeded $900 million, and if the unobligated balance on the following September 30 would have exceeded $500 million, even if these excise taxes were to be suspended for the calendar year in question. (As of September 30, 1984, the unobligated balance in the Superfund was $295 million.) Further, the authority to collect taxes would otherwise terminate when cumulative receipts from these taxes reach $1.38 billion. (Cumulative revenues from these excise taxes through September 30, 1984, amounted to $0.863 billion.)

Post-closure Liability Trust Fund and Tax

Effective after September 30, 1983, an excise tax of $2.13 per dry weight ton is imposed on hazardous waste which is received at a qualified hazardous waste disposal facility and which will remain at the facility after its closure. These tax receipts are deposited into the Post-closure Liability Trust Fund. This Trust Fund is to assume completely the liability, under any law, of owners and operators of closed hazardous waste disposal facilities that meet certain conditions. No liabilities have yet been assumed by the Trust Fund. These provisions were enacted in CERCLA.

Authority to collect the post-closure tax would be suspended for any calendar year after 1984, if the unobligated balance in the Trust Fund had exceeded $200 million on the preceding September 30. (Cumulative receipts from the post-closure tax through September 30, 1984, amounted to less than $5.9 million.) Further, authority to collect the tax terminates when cumulative receipts from the crude oil and chemical excise taxes, described above, reach $1.38 billion, or, if earlier, after September 30, 1985.

B. Finance Committee Amendment to S. 51

Hazardous Substance Superfund

The committee amendment redesignates the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund." and continues and expands the Superfund by allocating to the fund the balance of the existing Superfund and Post-closure Liability Trust Fund in addition to amounts equivalent to the new Superfund Excise Tax on manufacturers, together with the present law taxes on petroleum and chemical feedstocks (modified as described below). No general revenues are authorized to be appropriated to the Superfund after fiscal year 1985.

The Superfund expenditure purposes and administrative provisions are generally the same as under present law; however, the committee amendment relocates these provisions from CERCLA to the trust fund code (Chapter 98) of the Internal Revenue Code.

The amended trust fund provisions are effective on October 1, 1985.

Petroleum and chemical feedstocks taxes

The petroleum and chemical feedstocks taxes (Codes secs. 4611 and 4661) are extended for five years, through September 30, 1990, at their present law rates. Exemptions from the chemical feedstocks tax are provided for exports of taxable chemicals; substances used to produce animal feed; and certain domestically recycled nickel, chromium, or cobalt (in addition to the present law exemptions).

These taxes would be suspended or terminated earlier than September 30, 1990, under certain conditions when the unobligated balance in the Superfund exceeded $1.5 billion. Additionally, the taxes would expire at any point at which the Secretary determines that cumulative Superfund receipts during the reauthorization period (including interest but not including recoveries, fines, or other non-tax amounts) equal or exceed $7.5 billion.

Superfund Excise Tax

Under the committee amendment, a new Superfund Excise Tax is imposed on the sale or lease of tangible personal property, in connection with a trade or business, by the manufacturer of the property. The tax rate is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., $8 of tax per $10,000 of taxable amount). In the case of imports, the tax is imposed on the importer of tangible personal property based on the customs value (or, if no customs value is available, the fair market value) of the imported property plus customs duties. The tax is fully deductible against Federal income taxes.

A credit is allowed against the tax for purchases of tangible personal property, which is allocable to the cost of manufactured goods, using the manufacturer's inventory accounting method for income tax purposes. No tax is imposed on any manufacturer having $5 million or less of sales or lease receipts in any year. (In the case of imports, no tax is imposed on any shipment with a customs value, including duties, of less than $10,000.) Credits in excess of a manufacturer's tax liability may be carried over against later years' tax liabilities; however, excess credits may not be refunded. For purposes of the credit, expenses for items which are depreciable for income tax purposes are fully included in the year of purchase.

In addition to the exemption for small manufacturers, items sold or leased by governmental units and by tax-exempt organizations (other than by unrelated trades or businesses), are exempt from the tax. Additionally, exported items are exempt from tax. Special rules are provided for purposes of implementing the export exemption, as well as for establishing constructive sales prices for manufactured goods in appropriate cases.

For purposes of the tax, "manufacturing" is generally defined as it is for purposes of the Standard Industrial Classification ("SIC") Manual published by the Office of Management and Budget. Manufacturing also includes mining and the production of raw materials generally. However, manufacturing subject to the tax does not include the storage or transportation of property (or services incidental thereto); the preparation of food in a restaurant or other retail establishment; or the incidental preparation of property.

"Tangible personal property" includes natural gas and other gaseous products and materials, but does not include electricity, unprocessed agricultural products (including timber), or unprocessed food products.

The Superfund Excise Tax is to be effective from January 1, 1986 through December 31, 1990, with provisions for earlier termination or suspension under the same conditions as the petroleum and chemical feedstocks taxes (discussed above). Returns for the tax are to be filed on an annual basis, using the taxpayer's taxable year for income tax purposes.

Repeal of post-closure liability tax and trust fund

The committee amendment repeals the Post-closure Liability Trust Fund and the related hazardous waste disposal tax (Code sec. 4681), effective October 1, 1985. Amounts in the Trust Fund at that time are to be transferred to the Superfund.

Study of alternative Superfund taxes

The committee amendment directs the General Accounting Office ("GAO") to report to the Finance Committee by January 1, 1988, regarding alternative mechanisms for financing the Superfund. This report is to include a study of the effect of a tax on hazardous waste on the generation and disposal of such waste.

Industrial development bonds for hazardous waste disposal facilities

The committee amendment allows State and local governments to issue tax-exempt industrial development bonds (IDBs) to finance facilities for the treatment of hazardous waste, as these terms are defined under section 1004 of the Solid Waste Disposal Act. This exemption is limited to facilities which are subject to permitting requirements under the Resource Conservation and Recovery Act (RCRA). This provision is effective on the date of enactment.

II. EXPLANATION OF FINANCE COMMITTEE AMENDMENT TO S. 51

A. Present Law

1. Hazardous Substance Response Trust Fund and Taxes

Hazardous Substance Response Trust Fund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (P.L. 96-510) established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous substance spills and uncontrolled hazardous waste sites.

The Hazardous Substance Response Trust Fund ("Superfund") was established by CERCLA as a trust fund in the Treasury of the United States. Amounts in the Superfund are available for expenditures incurred under section 111 of CERCLA (as enacted) in connection with releases or threats of releases of hazardous substances into the environment. Allowable costs include: (1) costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action; (2) payment of claims for injury to, or destruction or loss of, natural resources belonging to or controlled by the Federal or State governments; and (3) certain costs related to response, including damage assessment, epidemiologic studies, and maintenance of emergency response forces.[2]

Under CERCLA, there are appropriated to the Superfund (though September 30, 1985): (1) amounts equivalent to amounts received in the Treasury under Internal Revenue Code sections 4611 (pertaining to the petroleum tax) and 4661 (pertaining to the tax on certain chemical feedstocks); (2) amounts recovered from responsible parties on behalf of the Superfund under CERCLA; (3) penalties assessed under title I of CERCLA; and (4) punitive damages under section 107(c)(8) of CERCLA (pertaining to damages for failure to provide removal or remedial action upon order of the President). The petroleum and feedstock taxes are scheduled to expire after September 30, 1985.

In addition to these amounts, CERCLA authorizes general revenue appropriations to the Superfund of $44 million per year for fiscal years 1981 through 1985 (i.e., an aggregate of $220 million) and, for 1985, an additional amount equal to so much of the aggregate authorized to be appropriated for 1981 through 1984 as has not been appropriated before October 1, 1984.

Not more than 15 percent of the Superfund receipts attributable to taxes and general revenue appropriations may be used for the payment of natural resource damage claims. CERCLA further provides that claims against the Superfund may be paid only out of the Fund. If, at any time, claims against the Fund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they were finally determined.

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[2] The Fund also may be used for payment of claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act. All moneys recovered under section 311(b)(6)(B) of the Clean Water Act are appropriated to the Superfund. These claims and moneys involve certain costs arising before the date of enactment of CERCLA.

The Superfund has authority to borrow for the purposes of paying response costs in connection with a catastrophic spill or natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the succeeding 12 months; advances for paying natural resource damage claims may not exceed 15 percent of such revenues. All advances must be repaid by September 30, 1985.

The Superfund is managed by the Secretary of the Treasury, who is required to report annually to Congress on the financial condition and operations of the Fund.

Petroleum tax

Present law (sec. 4611 of the Code) imposes an excise tax (the "petroleum tax") of 0.79 cent per barrel on domestic crude oil and on petroleum products (including crude oil) entering the United States for consumption, use, or warehousing. The tax on domestic crude oil is imposed on the operator of any United States refinery receiving such crude oil, while the tax on imported petroleum products is imposed on the person entering the product into the United States for consumption, use, or warehousing. If crude oil is used in, or exported from, the United States before imposition of the petroleum tax, the tax is imposed on the user or exporter of the oil.

Domestic crude oil subject to tax includes crude oil condensate and natural gasoline, but not other natural gas liquids. Taxable crude oil does not include oil used for extraction purposes on the premises from which it was produced, such as for powerhouse fuel or for reinjection as part of a tertiary recovery process. In addition, the term crude oil does not include synthetic petroleum (e.g., shale oil, liquids from coal, tar sands, biomass, or refined oil).

Petroleum products which are subject to tax upon being entered into the United States include crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form. For purposes of determining whether crude oil or petroleum products (and chemicals subject to the feedstock tax) have been produced in, entered into, or exported from the United States, the term United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any possession of the United States. The United States also includes the Outer Continental Shelf areas and foreign trade zones located within the United States. There is no exception for bonded petroleum products. Revenues from the petroleum tax are not paid to Puerto Rico or the Virgin Islands under the cover over provisions of section 7652 of the Code.

Present law specifies that the petroleum tax is to be imposed only once with respect to any petroleum product. Thus, anyone who is otherwise liable for the tax may avoid payment by establishing that the tax already has been imposed with respect to the product.

Amounts equivalent to the revenues from the petroleum tax are deposited in the Superfund, through September 30, 1985.

The petroleum tax is scheduled to expire under present law after September 30, 1985. Present law also contains provisions which would have temporarily triggered-off the tax had revenues accumulated faster than a specified rate. If on September 30, 1983, or September 30, 1984, (1) the unobligated balance in the Superfund had exceeded $900 million, and (2) the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, had determined that such unobligated balance would exceed $500 million on September 30 of the following year (if no tax was imposed under section 4611 or section 4661 of the Code during the calendar year following the first date referred to above), then no tax would have been imposed during the first calendar year beginning after the first date referred to above. (As of September 30, 1984, the unobligated balance in the Superfund was $295 million.) Further, the authority to collect the tax terminates should cumulative receipts from the petroleum and chemical taxes reach $1.38 billion (sec. 303 of CERCLA). (As of September 30, 1984, cumulative receipts from these taxes amounted to $0.863 billion.)

Tax on chemical feedstocks

Present law (sec. 4661 of the Code) imposes an excise tax on the sale or use of 42 specified substances ("chemical feedstocks") by the manufacturer, producer, or importer thereof.[3] These chemical feedstocks generally are intrinsically hazardous or may create hazardous products or wastes when used. The tax is imposed on chemical feedstocks manufactured in the United States or entered into the United States for consumption, use, or warehousing. The tax rates are specified per ton of taxable chemical, and vary from 22 cents to $4.87 per ton. In the case of a taxable chemical which is a gas (e.g., methane), the tax is imposed on the number of cubic feet of such gas which is equivalent to 2,000 pounds on the basis of molecular weight. (See Table 1 for a list of taxable chemical feedstocks and applicable tax rates under present law.)

Table 1.—Present Law Excise Tax on Chemical Feedstocks

Chemical feedstock	Tax rate (per ton)
Organic substances:	
Acetylene	$4.87
Benzene	4.87
Butadiene	4.87
Butane	4.87
Butylene	4.87
Ethylene	4.87
Methane	3.44
Napthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Inorganic substances:	
Ammonia	2.64

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[3] Under proposed regulations, isomers of xylene are taxable on their use of sale.

Table 1.—Present Law Excise Tax on Chemical Feedstocks—Continued

Chemical feedstock	Tax rate (per ton)
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromite	1.52
Chromium	4.45
Cobalt	4.45
Cupric oxide	3.59
Cupric sulfate	1.87
Cuprous oxide	3.97
Hydrochloric acid	.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Nitric acid	.24
Phosphorous	4.45
Potassium dichromate	1.69
Potassium hydroxide	.22
Sodium dichromate	1.87
Sodium hydroxide	.28
Stannic chloride	2.12
Stannous chloride	2.85
Sulfuric acid	.26
Zinc chloride	2.22
Zinc sulfate	1.90

The tax rates on petroleum and chemical feedstocks were set to achieve a $1.6 billion Superfund program over five years, and to allocate 65 percent of the tax burden to petrochemicals, 20 percent to inorganic chemicals, and 15 percent to petroleum. This allocation was based on the respective proportions of wastes (derived from these chemicals) found in hazardous waste sites (based on data available in 1980). In addition, the chemical feedstock tax rates were limited to 2 percent of wholesale price (based on data available in 1980).

Present law provides six exemptions from the tax on chemical feedstocks. Four of these exemptions were provided in CERCLA as enacted in 1980, and two exemptions were added by the Tax Reform Act of 1984. First, in the case of butane and methane, the tax is not imposed if those substances are used as a fuel. (If those substances are used other than as a fuel, for purposes of the tax, the person so using them is treated as the manufacturer.) A second exemption is provided for nitric acid, sulfuric acid, and ammonia (and methane used to produce ammonia) used in the manufacture or production of fertilizer or directly applied as fertilizer. Third, present law provides an exemption for sulfuric acid produced solely as a byproduct of (and on the same site as) air pollution control equipment. Fourth, any substance is exempt to the extent it is derived from coal.

The Deficit Reduction Act of 1984 (P.L. 98-369) added two further exemptions to the tax on chemical feedstocks. First, the 1984 Act provided an exemption for petrochemicals otherwise subject to the tax (i.e., acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphtalene, propylene, toluene, and xylene) which are used for the manufacture or production of motor fuel, diesel fuel, aviation fuel, or jet fuel. (The petroleum tax continues to apply to domestic crude oil or imported petroleum products used for these purposes.) This exception applies if the otherwise taxable substance is (1) added to a qualified fuel, (2) used to produce another substance that is added to a qualified fuel, or (3) sold for either of the uses described in (1) or (2) above. Second, the 1984 Act provided that the transitory existence of cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide during a metal refining process is not subject to tax if the compound exists in the process of converting or refining non-taxable metal ores or compounds into other (or more pure) non-taxable compounds. (If a substance is removed in the refining process, tax is imposed even if the substance is later reintroduced to the refining process.) These provisions were effective as if enacted as part of CERCLA.

Under present law, if a taxpayer uses a taxable chemical prior to any sale, the tax is imposed as if the chemical had been sold. When a taxable chemical is used to manufacture or produce a second taxable chemical, an amount equal to the tax paid on the first chemical is allowed as a credit or refund (without interest) to the manufacturer or producer of the second chemical (but not in an amount exceeding the tax imposed on the second chemical). Thus, the imposition of tax more than once on the same substance is avoided.

Amounts equivalent to the revenues from the tax on chemical feedstocks are deposited in the Superfund, through September 30, 1985.

The tax on chemical feedstocks is scheduled to expire, together with the petroleum tax, after September 30, 1985, with a provision for earlier termination if the unobligated balance in the Superfund had exceeded $900 million. Further, the authority to collect the tax terminates should cumulative receipts from the petroluem and chemical taxes reach $1.38 billion (sec. 303 of CERCLA).[4]

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[4] These termination provisions are explained in greater detail in the previous section on the petroleum tax.

2. Post-closure Liability Trust Fund and Tax

Post-closure Liability Trust Fund

In addition to the Superfund, CERCLA established the Post-closure Liability Trust Fund in the United States Treasury. The Post-closure Liability Trust Fund is to assume completely the liability, under any law (including the liability provisions of CERCLA), of owners and operators of hazardous waste disposal facilities granted permits and properly closed under subtitle C of the Resource Conservation and Recovery Act ("RCRA") (Title II of the Solid Waste Disposal Act).[5]

This transfer of liability to the Trust Fund may take place after (1) the owner and operator of the facility has complied with the requirements under RCRA which may affect the performance of the facility after closure, (2) the facility has been closed in accordance with the regulations and the conditions of the permit, and (3) the facility has been monitored (as required by the regulations and permit) for a period not to exceed 5 years after closure to demonstrate that there is no substantial likelihood that any migration off site or release from confinement of any hazardous substance or other risk to public health or welfare will occur (sec. 107(k) of CERCLA). The transfer of liability is to be effective 90 days after the owner or operator of the facility notifies the Administrator of the Environmental Protection Agency (and the State, if it has an authorized program) that the required conditions have been satisfied. No liabilities have yet been transferred to the Post-closure Trust Fund under the present law.

In addition to payment of damages and cleanup expenses for such sites, the Post-closure Liability Trust Fund also may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons, after the period of monitoring required by RCRA, for facilities meeting the applicable transfer of liability requirements. The Trust Fund does not assume the legal liability of waste generators or transporters.

As in the case of the Superfund, claims against the Post-closure Liability Trust Fund may be paid only out of this Trust Fund. If, at any time, claims against this Trust Fund exceed the balance available for payment of those claims, then the claims are to be paid in full in the order in which they are finally determined.

The Post-closure Liability Trust Fund is subject to the same administrative provisions as the Superfund, including the right to borrow limited amounts from the Treasury as repayable advances.

Tax on hazardous wastes

Present law (sec. 4681 of the Code) imposes an excise tax ("post-closure tax") of $2.13 per dry-weight ton on the receipt of hazardous waste at a qualified hazardous waste disposal facility. The tax applies only to hazardous waste that will remain at the facility after the facility is closed. The tax is imposed on the owner or operator of the qualified hazardous waste disposal facility. It was intended that amounts equivalent to the revenues from this tax would be deposited into the Post-closure Liability Trust Fund.

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[5] RCRA provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transportation, storage, and treatment of these wastes. Permits generally are required under RCRA for hazardous waste treatment, storage, and disposal facilities.

For purposes of the post-closure tax, the term hazardous waste means any waste (1) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on December 11, 1980 (other than waste the regulation of which had been suspended by Congress on that date), and (2) which is subject to reporting and recordkeeping requirements under the Solid Waste Disposal Act as in effect in that date. Qualified hazardous waste disposal facilities are facilities which have received as permit or been accorded interim status under the Solid Waste Disposal Act.

The post-closure tax applies to the receipt of hazardous waste after September 30, 1983. However, if as of September 30 of any calendar year after 1983, the unobligated balance of the Post-closure Liability Trust Fund had exceeded $200 million, no tax would have been imposed during the following calendar year. Further, authority to collect the tax terminates (1) should cumulative receipts from the petroleum and chemical taxes, described in the previous section, reach $1.38 billion, or, (2) if earlier, at Septemer 30, 1985 (sec. 303 of CERCLA)

3. Industrial development bonds for solid waste facilities

Present law provides that interest on industrial development bonds ("IDBs") is tax-exempt only if (1) the bonds are issued for certain exempt purposes, or (2) the bonds qualify as small issue IDBs.[6] One of the exempt purposes for which tax-exempt IDBs may be issued is to finance solid waste disposal facilities (sec. 103(b)(4)(E)). Treasury regulations provide that solid waste disposal facilities for this purpose include property (or a portion of property) used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste. However, solid waste disposal facilities do not include facilities for collection, storage, or disposal of liquid or gaseous waste, unless such facilities are functionally related and subordinate to another qualifying facility. The regulations further provide that solid waste includes garbage, refuse, and other discarded solid materials (including materials resulting from industrial, commerical, and agricultural operations, and form community activities), but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved material in irrigation return flows or other common water pollutants (Treas. Reg. sec. 1.103-8(f)(2)).

Present law further allows tax-exempt IDBs to be used to finance public or private air or water pollution control facilities (sec. 103(b)(4)(F)). Proposed Treasury regulations provide that pollution control facilities for this purpose do not include property which is:

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[6] The small issue exemption applies to bonds used for the acquisition, construction, or improvement of land or depreciable property, where the aggregate authorized face amount of the issue (including certain outstanding prior issues) is $1 million or less. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million. The exemption for small issue IDBs expires December 31, 1986 (for bonds used to finance other than manufacturing facilities), or December 31, 1988 (for bonds used to finance manufacturing facilities).

(1) designed to prevent the release of pollutants in a major accident; (2) used to control materials or heat that traditionally have been controlled because their release would constitute a nuisance; or (3) used to control the release of hazardous materials or heat that would cause an immediate risk of substantial damage or injury to persons or property (Proposed Treas. Reg. sec. 1.103-8(g)(2)).

The Deficit Reduction Act of 1984 (P.L. 98-369) imposed statewide volume limitations on most IDBs and student loan bonds (including IDBs to finance solid waste disposal or pollution control facilities). The amount of all such bonds which may be issued in a State during any given year is equal to the greater of (1) $150 for each resident of the State, or (2) $200 million.

B. Reasons for Change

In 1980, Congress created a major Federal program to clean the worst abandoned hazardous waster sites in the country by enacting the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). CERCLA provided a 5-year, $1.6 billion cleanup program financed by $0.22 billion of general revenues and $1.38 billion of excise taxes on petroleum and specified chemical feedstocks. It was intended that the Hazardous Substance Response Trust Fund ("Superfund") would be supplemented by amounts collected from enforcement and cost recovery actions against responsible parties, and ultimately would become self-financing. Under CERCLA, the petroleum and chemical feedstock excise taxes were imposed through September 30, 1985.

It is now clear that the current Superfund program will not be adequate to achieve the goals of the 1980 Act. The Environmental Protection Agency ("EPA") estimates that only 15 of the 538 sites now on the National Priority List will be cleaned by September 30, 1985, and that the unobligated balance of the Superfund will be less than $10 million on that date. Moreover, Title I of S. 51 ("Superfund Improvement Act of 1985") substantially increases the financial requirements of the Superfund. Among other things, S. 51 would: expand the responsibilities of the Agency for Toxic Substances and Disease Registry; increase the Federal share of costs for cleaning certain State-owned sites and for treating contaminated ground water; increase the cost of the Love Canal buyout; require the Superfund to pay interest on loans of relocated businesses; require the EPA to maintain a Hazardous Substances Inventory; and would provide a right for citizens to sue in Federal court to enforce requirements under the Act and to seek the performance of nondiscretionary duties under the Act by the President or delegees.

S. 51, as reported by the Environment and Public Works Committee, provides $7.5 billion of funding ($1.03 billion from general revenues and $6.47 billion from unspecified taxes) over the 1986-1990 fiscal year period. In the Finance Committee's judgment, the $7.5 billion funding level (including interest credited on Superfund balances but not taking into account amounts collected from enforcement and cost recovery actions) will be necessary to finance the cost of the expanded Superfund program provided in this bill over the five year period. The current estimates of tax revenues and Trust Fund interest provided by the committee amendment ($6.9 billion and $0.5 billion, respectively), add to slightly less than the desired funding level. However, revenue projections for up to 5 years into the future may be somewhat uncertain because of unforeseen movements in the economy so that the committee amendment may generate the desired funding. In any event, the committee is committed to the $7.5 billion a target and expects to provide additional revenues should a shortfall develop.

In financing the substantial increase in the Superfund program, the Finance Committee sought to broaden the tax base, to minimize adverse trade effects, and to limit the impact of the program on the Federal deficit.

First, beginning in fiscal year 1986, there would no longer be an authorization of general revenue contributions to the Superfund. In light of the large budget deficits projected over the next five years, the Committee felt that the programs paid for from the Superfund should be funded without adding to those deficits.[7]

Second, although general revenue appropriations are not recommended, the committee is of the view that the cleanup of abandoned hazardous waste sites is a broad societal problem extending beyond the chemical and petroleum industries. Thus, the committee recommended a new excise tax on all manufacturing sectors of the economy. The Superfund Excise Tax ("SET") on manufacturers was structured as an indirect tax (i.e., on goods rather than on persons). Under the General Agreement on Tariffs and Trade ("GATT"), to which the United States is a signatory, indirect taxes generally may be imposed according to the "destination principle," (i.e., rebated on export and imposed on imports). By structuring the SET as a destination-principle tax, the committee sought to minimize the adverse effects of the tax on the U.S. merchandise trade balance. Given the $123 billion merchandise trade deficit in 1984, and projections for a larger trade deficit in 1985, the committee believes that any new tax to finance the Superfund must not undermine the competitiveness of U.S. exports nor favor imports over domestic production. The imposition of the Superfund Excise Tax is limited to manufacturers and producers (including mining because the committee believes that there is a reasonable nexus between these activities and the generation of the hazardous wastes that are found at Superfund sites. The Superfund Excise Tax is limited to manufacturers and producers with over $5 million of sales and lease income. To further reduce administration and compliance costs, Superfund Excise Tax liability generally is computed with reference to manufacturers' inventory costs, as computed for income tax purposes, rather than on the basis of tax payments shown on special invoices.

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[7] The Superfund Improvement Act of 1985, as reported by the Committee on Environment and Public Works, contains a provision that expands the scope of the Superfund program to include a 5-year demonstration program of assistance to victims of exposure to hazardous substances released into the environment. Under the bill, victim assistance grants are added to the list of permissible uses of the Superfund, but only the general revenue contribution to the Superfund is available for this purpose. Since the Finance Committee amendment to S. 51 contains no general revenue authorization, the bill, as amended, contains no funds for victim assistance grants.

Third, under current law, imports of petroleum and 42 chemical feedstocks are taxed at the same rate as domestic production, but exports of domestic chemicals are not exempt from tax. The committee exempted from tax exports chemical feedstocks and petroleum to limit the adverse effect of these taxes on U.S. trade in chemicals.

The committee did not increase the list of taxable feedstocks nor did it raise the rate of tax on any feedstock. The decision not to increase the revenue contribution from the excise taxes on petroleum and chemical feedstocks was based on the committee's view that (1) responsibility for hazardous waste celanup extends beyond the chemical and petroleum industries, and (2) damaging trade effects would occur at higher excise tax rates. Even though imports of domestically taxed feedstocks are subject to tax at the border (e.g., ethylene), many U.S. chemical companies are concerned that foreign-manufactured derivatives (e.g., polyethylene; a derivative of ethylene) can be imported tax-free. To eliminate the trade advantage of chemical derivative imports would require that tax be imposed on all derivatives: from chemical intermediates (e.g., polyethelene to final consumer products (e.g., plastic bags). Such a tax on chemical derivatives would be costly and complex to administer.

Fourth, the committee exempted chromium, cobalt, and nickel from the feedstock tax where these metals are diverted, recovered, or produced from solid waste (other than waste from a metal smelting, refining, or extraction process). Imports of recycled metals are not exempt. The intent of this amendment is to encourage the recycling of these metals, as opposed to land disposal. The amendment also favors recycling over both imported and primary domestic production of these metals.

Fifth, the committee directed the Genral Accounting Office ("GAO") to study alternative taxes for financing the Superfund, particularly taxes on hazardous wastes, that might reduce the generation and disposal of such wastes. The committee is concerned that the ongoing generation and disposal of hazardous waste may result in future Superfund sites requiring additional expenditures from the Superfund. The committee anticipated that the GAO would take account of the study conducted by the Congressional Budget Office on hazardous waste management policy alternatives.

The committee agreed to study, rather than enact, a tax on hazardous waste at this time because it was recognized that an improperly designed tax system might have harmful economic and environmental impacts. There also was concern that, given the present state of knowledge in the subject area, a tax on hazardous waste might not be a stable revenue source for financing the Superfund program. The committee was further concerned that exemptions from a hazardous waste tax for treatment and recycling processes might be abused, and could create an economic incentive for taxpayers to use less environmentally sound technologies. The committee also was concerned that a hazardous waste tax, like the chemical feedstock tax, could raise the cost of manufacturing certain products in the United States. This would effectively tax exports and subsidize imports of products whose production involves hazardous waste generation. Unlike the current feedstock tax, the economic burden of a hazardous waste tax might not be limited to a small percentage of production cost, and could erode significantly the competitiveness of certain U.S. exports.

In addition, the committee had questions regarding the adequacy of current environmental reporting and recordkeeping for tax administration pruposes, and the effect of disparities among State regulatory practices on a Federal hazardous waste tax. Another concern raised before the committee was that the imposition of a tax on hazardous waste management facilities could create a disincentive for complying with regulations under the Resource Conservation and Recovery Act ("RCRA") and could penalize hazardous waste generators, transporters, and disposers who accurately report and properly dispose of wastes. Imposition of a hazardous waste tax could be counterproductive if it resulted in an increase in "midnight" dumping and other illegal or unsafe disposal practices.

The committee repealed, effective October 1, 1985, the Post-closure Liability Trust Fund; it did not extend the post-closure disposal tax enacted in 1980; and it transferred the remaining balance of the Post-closure Liability Trust Fund to the Superfund. Under current law, the Post-closure Liability Trust Fund transfers legal liability of owners and operators of private disposal sites to the Federal Government, provided that such sites are operated and closed according to RCRA requirements, and the EPA determines, five years after closure, that there is no substantial likelihood of future release. In exchange for assuming such liability, a tax of $2.13 per dry weight metric ton was imposed on the disposal of hazardous wastes at qualified facilities. In effect, the post-closure tax is in lieu of an insurance premium for the coverage of all future claims arising from health and property damage caused by a hazardous waste facility.

The committee was concerned that the liability that ultimately could be transferred to the Federal Government under the post-closure provision is unlimited. Such liability is governed in part by State and local laws which could change, and could cover such items as medical expenses, pain and suffering, and income losses. Thus, the amount of claims against the Post-closure Fund could be extremely large, and there is concern that the Post-closure Fund would have inadequate resources to compensate the victims of even a few releases. This could necessitate a large tax increase or use of general revenues to pay these claims. The committee also was concerned that the transfer of liability to the Government may diminish incentives to construct durable disposal facilities. Moreover, the Post-closure Fund appears to subsidize hazardous waste disposal relative to treatment facilities. Further, because storage facilities do not pay the tax, a storage facility which switched its status to that of a disposal facility just before closure could transfer liability to the Post-closure Fund without ever having paid the tax. Other such mismatches between the tax and eligibility for transfer of liability are possible; for example, a facility with an interim status permit may be required to pay the disposal tax but, if it never receives a final RCRA permit, would never be able to transfer liability to the Fund. In addition, the Post-closure Fund does not relieve waste generators and transporters from legal liability for damages caused by wastes deposited at a hazardous waste disposal facility. Finally, under current law, the Federal Government can be used by any party that claims an injury as a result of exposure to a release from a disposal facility for which the Federal Government is liable. The future cost of litigation under this provision could be high.

Under current law, certain solid waste disposal facilities qualify for tax-exempt industrial development bond financing. The committee decided that hazardous waste treatment facilities generally should be eligible for such financing on equal terms. This amendment is intended to encourage the construction of hazardous waste treatment facilities that meet the standards of the Resource Conservation and Recovery Act for the safe treatment of hazardous waste.

C. Explanation of Provisions

1. The Hazardous Substance Superfund (Sec. 204 of Title II and New Sec. 9505 of the Code)

The committee amendment redesignates the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund," and continues and expands the Superfund by allocating to the Fund amounts equivalent to the revenues derived from the new Superfund Excise Tax on manufacturers (discussed below), together with the taxes on petroleum and chemical feedstocks.[8] No further amounts are authorized to be appropriated to the Superfund from general revenues. Other amounts allocated to the Fund under present law (including penalties, punitive damages, and amounts recovered on behalf of the Fund) are not affected by the committee amendment. In addition, the balance in the Post-closure Liability Trust Fund as of September 30, 1985, is to be transferred to the Superfund, in conjunction with the repeal of that Trust Fund (discussed below).

The current estimates of tax revenues and Superfund interest ($6.9 billion and $0.5 billion, respectively, add to slightly less than the desired funding level of $7.5 billion over a five-year period. The committee is committed to the $7.5 billion target and expects to provide additional revenues should a shortfall develop.

Under the committee amendment, Superfund monies continue to be available for expenditures incurred under section 111 of CERCLA (as in effect on the date of enactment of the committee amendment) in connection with releases or threatened releases of hazardous substances into the environment, including: (1) response costs; (2) related costs described in section 111(c) of CERCLA; (3) claims for injury to, or destruction of, natural resources belonging to or controlled by the Federal or State governments; and (4) compensable but unsatisfied claims arising under section 311 of the Clean Water Act.[9] As under present law, not more than 15 percent of appropriated amounts may be used for the payment of natural resource damage claims (item (3) above).

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[8] Amounts in the Hazardous Substance Response Trust Fund as of September 30, 1985, are also allocated to the renamed Superfund.

[9] Because no general revenues are to be appropriated after Setpember 30 1985 to the Superfund under the Finance Committee amendment, no Fund moneys will be available to fund the victim's assistance demonstration program included in S. 51, as reported by the Committee on Evironment and Pubilc Works (sec. 129 of S. 51 and sec. 111(c) of CERCLA).

The committee amendment relocates the Superfund provisions of CERCLA in the trust fund subtitle of the Internal Revenue ~~Code~~ (Subtitle I). As under present law, the Secretary of the Treasury will continue to manage the Superfund, and to report annually to Congress on the financial condition and operations of the Superfund (Code sec. 9602). The Superfund administrative provisions are also similar to present law. However, under the committee amendment, the Superfund is to have geneal authority to borrow from the Treasury (as repayable advances) amounts not exceeding estimated Superfund revenues during the succeeding 12 months. This authority is not to be limited (as it is under present law) to catastrophic spills or natural resource damage claims (not more than 15 percent of borrowed funds may be used to pay natural resource damage claims, however). All such advances must be repaid on or before December 31, 1990, and no advance may be made after September 30, 1990.

The trust fund provisions are effective on October 1, 1985.

2. Tax Provisions

a. Excise taxes on petroleum and chemical feedstocks (sec. 202 of title II, secs. 4611, 4661, and 4662 of the Code, and sec. 303 of CERCLA)

Extension of present law taxes

The committee amendment continues the taxes on petroleum (Code sec. 4611) and chemical feedstocks (sec. 4661), at their present law rates (see Table 1), through September 30, 1990. A special rule would provide for earlier suspension or termination of these taxes, together with the new Superfund excise tax on manufacturers, if the unobligated Superfund balance were to exceed $1.5 billion (discussed below). In addition, authority to collect the petroleum, chemical feedstock, and manufacturer taxes would terminate when and if cumulative Superfund receipts (including interest credited on Fund balances but not recoveries or other non-tax receipts) total $7.5 billion.[10]

Exemptions from chemical feedstocks tax

The committee amendment retains the present law exemptions to the tax on chemical feedstocks (sec. 4662) and adds the following exemptions.

Exports of taxable chemicals.—The committee amendment provides that the tax on chemical feedstocks is not to apply to feedstocks that are exported from the United States. In particular, the committee amendment exempts from tax any feedstock that is sold by the manufacturer or producer for export, or for resale to a second purchaser for export. If the purchaser cannot certify in advance that a feedstock will be exported, or if a tax has otherwise been paid on the exported feedstock, the person who paid the tax could claim a refund or credit (without interest) for the amount of the tax previously paid. Such person would be required to pay the tax amount refunded or credited to the exporter, or to obtain the exporter's written consent to his receiving the credit or refund. The Treasury is authorized to prescribe necessary regulations for administering these provisions.[11]

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[10] In conjunction with these changes, the committee amendment repeals the termination provisons of present law (sec. 4611(d)), which terminate the petroleum and chemical feedstock taxes if the unobligated balance in the Hazardous Substance Response Trust Fund exceeds specified amounts. The amendment also repeals section 303 of CERCLA; that section provides for termination of the environmental excise taxes when aggregate taxes collected exceed $1.38 billion.

Substances used to produce animal feed.—An exemption from the feedstock tax is provided for nitric acid, sulfuric acid, or ammonia (or methane used to produce ammonia) used in a qualified animal feed use by the manufacturer, producer, or importer, or else sold for use (or for resale for ultimate use) in a qualified animal feed use. Qualified animal feed use means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements. Under Treasury regulations, if tax is paid and a qualifying substance is subsequently used in a qualified animal feed use, the person so using the substance is entitled to a credit or refund (without interest) of the tax paid. Conversely, if an exemption is allowed and a substance is subsequently sold or used for a non-animal feed purpose, the person so selling or using the substance is to be subject to tax as if such person had manufactured the substance.

Certain recycled metals.—An exemption is provided under the committee amendment for nickel, chromium, or cobalt which is diverted, recovered, or produced from solid waste (as defined under section 1004 of the Solid Waste Disposal Act) as part of a recycling process (and not as part of the original manufacturing or production process). The exemption does not apply to metals which are diverted, recovered, or produced from the byproduct, coproduct, or waste of a metal refining, smelting, or other extraction process.

The recycling exemption does not apply to any taxpayer for any period during which the taxpayer has been notified by the Environmental Protection Agency that the taxpayer is a potentially responsible party for a site that is listed on the National Priorities List (maintained by EPA pursuant to section 105 of CERCLA) unless the taxpayer is in compliance with all orders, decrees, or judgments issued againt the taxpayer in any action or proceeding with respect to the listed site (including actions or proceedings under CERCLA or the Solid Waste Disposal Act). The exemption also does not apply to any imported taxable substance.

For purposes of the credit for previously taxed chemical feedstocks, recycled metals that are exempt under this provision are treated as previously taxed (effectively preventing the imposition of further tax on the metal).

Effective date

The extension of the petroleum and chemical feedstocks taxes, and the amendments to the chemical feedstocks tax, are effective on October 1, 1985.

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[11] Rules similar to the rules of sec. 4221(b) (regarding sales for further manufacture or export for excise tax purposes) are to apply in determining proof of export.

b. Superfund excise tax (sec. 203 of title II and new Chapter 30 of the Code (secs. 4001-4004, 4011-4013, 4021-4023, and 4031))

General rules

The committee amendment establishes a new Superfund Excise Tax on manufacturers. The tax, which would be at a 0.08 percent rate, would be imposed on the sale, lease, or import of tangible personal property by the manufacturer or importer of the property. Exports of tangible personal property would be exempt, as would the sale, lease, or import of unprocessed agricultural, food, and timber products. To avoid the imposition of duplicative taxes in multi-stage production, manufacturers would be allowed a credit based on the amount of Superfund excise tax included in their purchases of tangible personal property (e.g., materials and equipment) allocable to the manufacture of tangible personal property. Small manufacturers (with less than $5 million of taxable receipts) and small import shipments (under $10,000) would be exempt from the tax.

Imposition of the tax

Under the committee amendment, a new Superfund Excise Tax is imposed on the sale or lease (in connection with a trade or business) of tangible personal property in the United States [12] by the manufacturer. The tax rate is 0.08 percent ($8 per $10,000 of taxable amount). The taxable amount in the case of a sale is the price (in money or the fair market value of other consideration) charged to the purchaser by the seller, including items payable to the seller during the taxable period with respect to the transaction (including Federal and State sales and excise taxes, other than the Superfund Excise Tax, imposed on the transaction). In the case of a lease by the manufacturer of the taxable property, the taxable amount is the gross lease payments received during the taxable period (including Federal and State sales and excise taxes, other than Superfund Excise Tax, imposed on the lease). The tax applies to lease payments received (or considered received under the partial year proration rules described below) during the period the Superfund Excise Tax is in effect, regardless of when the lease was entered into. The manufacturer is liable for the tax.

The tax is also imposed on the import of tangible personal property into the customs territory United States by the importer of the tangible personal property. The taxable amount is the customs value plus customs duties (and any other duties or any excise taxes other than the Superfund Excise Tax) that may be imposed. The tax on imports is to be collected in the same manner as duties by the customs service. Shipments for which the taxable amount is less than $10,000 are exempt from the tax. The importer is liable for the tax.

The Superfund Excise Tax is deductible against Federal income tax.

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[12] For these purposes, the United States includes the 50 States, the District of Columbia, and any possession of the United States.

Definitions and special rules

Manufacturing.—Manufacturing includes the production of tangible personal property, including raw materials. The committee intends that the term "manufacturing" be read broadly to include mining and producing. The categories of mining and manufacturing establishments set forth in Divisions B and D of the Standard Industrial Classification ("SIC") Manual, published by the Office of Management and Budget, generally reflect the committee's intent as to the proper line separating manufactuing from nonmanufacturing activity.

Certain activities are not considered to be manufacturing under the committee amendment. Manufacturing does not include services furnished incidental to the storage or transportation of property, the preparation of food in a restaurant or other retail food establishment, or the incidental preparation of property by a retailer or wholesaler, including routine assemblage. The SIC Manual generally excludes from manufacturing agriculture, forestry, fishing, and construction.

Tangible personal property.—Tangible personal property, for purposes of this tax, generally includes all property that is not either real property or intangible personal property. It includes natural gas and other gaseous materials. It does not include unprocessed agricultural products (including timber) nor unprocessed food products (including fish) nor electricity. The committee intends that Treasury regulations coordinate the definitions of unprocessed agricultural products and unprocessed food products with the 5-digit tariff code for purposes of exempting from this tax imports of these items. Tangible personal property also does not include mineral rights (including oil or gas rights), since these interests are themselves considered to be real property. Minerals (or oil or gas) are, however, considered to be tangible personal property after they have been mined or otherwise extracted.

Containers, transportation charges, constructive sales price.—The committee amendment provides that the Secretary of the Treasury is to issue regulations specifying that charges for coverings, containers, and packing are included in the taxable amount. The regulations are also to provide that transportation (including pipeline transportation) and related charges (including insurance and installation) and Superfund Excise Tax (but no other excise tax) are excluded from the taxable amount (but only to the extent the amount of the transportation and related charges is established to the satisfaction of the Secretary in accordance with regulations).

The regulations are also to provide rules establishing a constructive sales price when, for example, a manufacturer sells directly at retail or sells only or primarily to related persons.

These regulations are to be similar to the rules of section 4216(a) and (b) (relating to containers, packing, and transportation charges, and constructive sales prices for excise tax purposes).

Timing of receipt and expenses.—In computing the taxable amount and qualified inventory costs of a taxpayer, an amount shall be treated as recognized, paid, or incurred at the time it is recognized, paid, or incurred under the taxpayer's method of accounting for Federal income tax purposes (including, for example, the installment method).

Credit against tax

The committee amendment provides manufacturers a credit against the Superfund Excise Tax that is the greater of two amounts:

(1) The first amount is equal to the Superfund Excise Tax imposed on sales and leases (but not imports), to the extent it does not exceed $4,000.[13] The committee amendment provides that persons under common control (whether corporations, partnership, proprietorships, or other entities) are to be treated as one taxpayer for purposes of the standard $4,000 credit. The rules of section 52 (originally drafted for purposes of the targeted jobs credit) apply to determine whether persons are under common control. Thus, a manufacturer (but not an importer) with a taxable amount of $5 million or less would be exempt from the tax ($5 million times 0.08 percent equals $4,000).

(2) The second amount is equal to the qualified inventory costs of the taxpayer multiplied by .08 percent.

Qualified inventory costs are direct material and other costs (including the Superfund Excise Tax on such materials) of tangible personal property included in the manufacturer's cost of goods sold for income tax purposes. Qualified inventory costs include amounts paid or incurred for the acquisition of tangible personal property incident to, and necessary for, production or manufacturing operations or processes (e.g., equipment or manufacturing operations or processes (e.g., equipment), if depreciation of such property is included in the manufacturer's costs of goods sold. Depreciation and amortization deductions are not included in qualified inventory costs. Qualified inventory costs also include the cost of utilities subject to the Superfund Excise Tax. Qualified inventory costs include lease payments on qualifying equipment paid or incurred during the period the Superfund Excise Tax is in effect. Qualified inventory costs do not, however, include any cost or amount with respect to an item acquired before the effective date of the tax. Additionally, qualified inventory costs do not include the inventory costs of any non-manufacturing operation. Qualified inventory costs are to be computed in the same manner as these costs are computed for purposes of determining the inventory of manufacturers under section 471 (i.e., full absorption accounting).[14] If the taxpayer uses a different method of accounting for computing income taxes, then the method of inventory allocation for Superfund excise tax purposes shall conform to the method of allocation for income tax purposes, unless the Secretary provides otherwise in regulations.

The amount of the credit allowed to be claimed for a particular taxable period may not exceed the liability for the Superfund Excise Tax. The amount by which the credit exceeds the liability for a particular taxable period may be carried to the next taxable period and added to the credit potentially allowable for that period. If, for example, a manufacturer had qualified inventory costs of $11 million in a taxable period but received $10 million in sales or lease receipts, the taxpayer would owe no Superfund Excise Tax for that taxable period and would carry over to the next taxable period a credit of $800. (Because the credit for small manufacturers is equal to the lesser of $4,000 or the tax imposed, no amount of the standard $4,000 credit can be carried over to future years.)

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[13] This amount is prorated for taxable periods that do not include 12 full months. Thus, for example, a manufacturer subject to this tax for 6 months of a 12 month taxable year would be entitled to a maximum credit of $2,000 under this provision.

[14] However, as described above, capital costs are expensed rather than depreciated or amortized.

Exempt transactions

The committee amendment exempts several types of transactions from the Superfund Excise Tax. First, the Superfund Excise Tax is not imposed on the sale of any property that is to be exported outside the United States, as provided in regulations. The committee intends that these regulations follow the principles of section 4221(b) (relating to excise taxes), and the regulations thereunder, for purposes of proving that an article has been exported. In particular, the committee intends that Treasury regulations adopt the rule in section 4221(b) that provides that the exemption from tax ceases to apply to the sale of an article unless, within six months of the earlier of either the date of sale or date of shipment by the manufacturer, the manufacturer receives proof that the article has been exported.

The committee amendment also exempts from the Superfund Excise Tax the sale or lease of tangible personal property by the United States or any other governmental entity or by an organization that is exempt from the income tax (unless the transaction is part of an unrelated trade or business within the meaning of section 513). Imports by governmental entities and organizations that are exempt from the income tax are subject to the Superfund excise tax.

The committee amendment also exempts small imports from this tax. A small import is any shipment (whether formal or informal) the taxable amount of which is less than $10,000. The committee intends that "shipment" be interpreted for purposes of this tax in the same manner that it is generally interpreted for customs purposes. Thus, a shipment is generally all articles on one carrier for one consignee on one day.

Time for filing returns and related administrative matters

Taxpayers are required to file a Superfund Excise Tax return annually, at the same time they file their regular income tax return. Thus, for example, a corporation that has as its taxable year the calendar year would be required to file the Superfund Excise Tax return by March 15 of the following year, which is the same date that its corporate income tax return (Form 1120) is due. As with other tax returns, the Secretary may grant a reasonable extension of time for filing a Superfund Excise Tax return (*see* sec. 6081).

The committee amendment provides that a manufacturer who has less than $5 million of annual sales or lease receipts is not required to file a Superfund Excise Tax return.[15] These taxpayers have no tax liability because of the credit mechanism (described above). In addition, the Secretary may provide by regulations that certain other taxpayers with more than $5 million of sales or lease receipts, but who may have no tax liability, need not file returns.

The taxable period for which liability for the Superfund Excise Tax must be determined is the taxable person's taxable year for purposes of the income tax. If the taxpayer does not have a taxable year for purposes of the income tax, then the taxable period for purposes of the Superfund Excise Tax is the calendar year.

The penalties for failure to file a tax return or to pay tax that are applicable to the income tax (sec. 6651) are made applicable to the Superfund Excise Tax. In addition, the civil negligence penalty (sec. 6653(a)) that is applicable to the income tax is made applicable to the Superfund Excise Tax. The criminal penalties of the Code are generally applicable to the Superfund Excise Tax.

The committee amendment generally requires that the Superfund Excise Tax be deposited quarterly. For the first taxable year that a manufacturer is potentially subject to this tax, any manufacturer with $50 million or less of sales or lease payments determined in the prior year is not required to deposit quarterly; these taxpayers may pay the Superfund Excise Tax when they file their returns. In subsequent taxable years, any manufacturer not previously liable for a payment of Superfund Excise Tax will not be required to deposit quarterly. Thus, for example, a manufacturer who paid Superfund Excise Tax for 1986 would be required to deposit quarterly in 1987, whereas a manufacturer not required to pay any Superfund Excise Tax in 1986 would pay the Superfund Excise Tax (if any) for which the manufacturer is liable for 1987 with the manufacturer's return. The existing penalty for failure to make deposits (Code sec. 6656) applies to failures to deposit the Superfund Excise Tax. This penalty will not apply, however, if the manufacturer deposits at least the lesser of 90 percent of the tax due or 100 percent of the previous year's liability.[16]

The tax on imports is to be collected in the same manner as duties by customs agents. Consequently, the committee amendment does not specify deposit rules for the tax on imports.

Revenues from the Superfund Excise Tax are not paid to Puerto Rico or the Virgin Islands or any other possession or territory under the cover over provisions of section 7652 of the Code or similar provisions.

The Secretary of the Treasury is authorized to issue regulations to carry out the purposes of the Superfund Excise Tax.

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[15] This exemption is prorated for taxable periods that do not include 12 full months. Thus, for example, a manufacturer subject to this tax 6 months of a 12 month taxable year would not be required to file a return if it had less than $2.5 million of sales or lease receipts in that taxable year.

[16] A taxpayer may avoid this penalty with respect to any year the taxpayer is liable for Superfund Excise Tax by depositing at least 90 percent of the tax due for that taxable year. A taxpayer may, however, avoid this penalty with respect to a year the taxpayer is liable for this tax by depositing 100 percent of the previous year's liability for this tax only if the taxpayer prorates this amount for a full 12-month period. Thus, if a taxpayer was liable for $100,000 of Superfund Excise Tax for its taxable year July 1, 1985 through June 30, 1986, the taxpayer would be considered to have deposited 100 percent of the previous year's liability by depositing $200,000.

Effective dates

The Superfund Excise Tax applies with respect to taxable amounts received after December 31, 1985. The tax will not apply with respect to amounts received after December 31, 1990. Additionally, the Superfund Excise Tax will not be imposed if the Superfund tax on petroleum and chemical feedstocks is suspended before September 30, 1990, as a result of the termination provisions of the bill. (These termination provisions are discussed in greater detail below.)

The bill provides special rules for any taxable period including December 31, 1985 or December 31, 1990. In the case of such a taxable period, the taxpayer must, in computing its taxable amount and credit for the Superfund Excise Tax, prorate its receipts and purchases on a monthly basis. For example, a taxpayer whose taxable year runs from February 1 to January 31 must, under this special rule, prorate one-twelfth of its receipts and one-twelfth of its purchases as representing those amounts for the period for January 1 through January 31, 1986. In addition, the $4,000 standard credit similarly would be prorated.

c. Termination of taxes (secs. 202(a) and 203(a) of Title II and secs. 4002, 4611(d), and 4661(c) of the Code)

Under the committee amendment, the petroleum and chemical feedstocks taxes are each scheduled to expire after September 30, 1990, and the Superfund Excise Tax on manufacturers is scheduled to expire after December 31, 1990. A special rule would provide for earlier suspension or termination of each of these taxes if, on September 30, 1988 or 1989 (1) the unobligated Superfund balance exceeds $1.5 billion, and (2) the Treasury, after consulting with EPA, determines that this balance will exceed $1.5 billion on the following September 30th if none of these taxes is imposed during the intervening year. The taxes would be suspended for the first calendar year following the date of an affirmative determination (i.e., 1989 or 1990, respectively).

The petroleum, chemical feedstocks, and manufacturing excise taxes would also expire when and if Superfund receipts of tax revenues plus interest credited to the fund (but not including amounts from enforcement and cost recovery actions) total $7.5 billion. If the $7.5 billion total is reached between September 30 and December 31, 1990, then the Superfund Excise Tax would be terminated at that time. Any such expiration of the tax would be based on projections made by the Treasury on a quarterly basis (and at such other times as the Treasury deems appropriate) regarding cumulative taxes and interest projected to be credited to the Fund. In the event of an early termination of the Superfund Excise Tax, the committee amendment specifies that the amount of tax and the amount of any credits against the tax (including qualified inventory credits or the $4,000 credit for small manufacturers) are to be prorated based on the number of days in the taxable period up to and including the termination date. For example, if the tax terminated on July 1, 1990, a calendar year taxpayer would compute its tax based on one-half its otherwise applicable taxable amount and one-half of its otherwise allowable credit. The Treasury is also provided with regulatory authority to set procedures implementing these early termination provisions.

d. Repeal of Post-closure Liability Tax and Trust Fund (sec. 205 of Title II, secs. 4681 and 4682 of the Code, and sec. 232 of the Hazardous Substance Response Revenue Act of 1980)

The Post-closure Liability Trust Fund is repealed effective October 1, 1985, and the associated hazardous waste disposal tax (Code secs. 4681 and 4682) is not extended beyond September 30, 1985. Amounts in the Post-closure Trust Fund at that time are to be transferred to the Superfund. Thus, under the committee amendment, no funds would be available for the payment of claims potentially arising due to these closed sites.

e. Study of alternative taxes (see. 207 of Title II)

The committee amendment directs the General Accounting Office (GAO) to conduct a study of Superfund financing mechanisms, including the possibility of implementing a tax on disposal of hazardous wastes as an additional or alternative financing source. This study is to consider the effect of a hazardous waste tax on the generation and disposal of hazardous waste. The committee anticipates that the GAO will take account of the study conducted by the Congressional Budget Office on hazardous waste management policy alternatives. The GAO is directed to report to the Finance Committee not later than January 1, 1988, regarding the study described above.

3. Industrial Development Bonds for Hazardous Waste Treatment Facilities (sec. 206 of Title II and sec. 103(b)(4) of the Code)

The committee amendment interest on a tax exemption for industrial development bonds ("IDBs") used to finance facilities for the treatment of hazardous waste. The terms "treatment" and "hazardous waste" for this purpose have the meanings provided under section 1004 of the Solid Waste Disposal Act. The exemption is limited to facilities which are subject to final permit requirements under the Resource Conservation and Recovery Act (RCRA) (subtitle C of Title II of the Solid Waste Disposal Act). IDBs used to finance hazardous waste treatment facilities are subject to the volume and other limitations applicable to IDBs generally.

III. BUDGET EFFECTS OF THE COMMITTEE AMENDMENT AND VOTE OF THE COMMITTEE

A. Budget Effects

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of title II of S. 51 as reported by the Committee on Finance.

Estimated Revenue Effects of Title II as Reported by the Committee on Finance, Fiscal Years 1986-91

[In millions of dollars]

Provision	1986	1987	1988	1989	1990	1991	1986-91
Gross revenues to the Superfund:							
Extension of excise tax on petroleum	39	42	42	42	42	3	210
Extension of excise tax on chemical feedstocks	219	240	251	261	270	14	1,255
New Superfund Excise Tax	344	946	1,025	1,112	1,208	796	5,431
Total excise tax revenues to the Superfund	602	1,228	1,318	1,415	1,520	813	6,896
Net increase in budget receipts (after income tax offset) from Superfund taxes	452	921	988	1,061	1,140	610	5,172
IDB's for hazardous waste treatment facilities	−9	−18	−31	−43	−57	−70	−228
Net change in budget receipts	443	903	957	1,018	1,083	540	4,944

B. Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote of the Committee on Finance on the motion to report the committee amendment to title II of S. 51. The committee amendment to title II of S. 51 was ordered favorably reported by a roll call vote of 18 yeas and 1 nay.

IV. REGULATORY IMPACT AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

A. Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee on Finance makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of title II of S. 51, as reported.

Number of individuals and businesses who would be regulated

Title II of the bill does not involve new or expanded regulation of individuals or businesses. It does, however, impose a new manufacturers excise tax at a low rate (0.08 percent) on manufacturers and producers (including importers) and lessors of tangible personal property. This new Superfund Excise Tax applies to manufacturers and producers with over $5 million of sales and lease income. This new tax is effective on January 1, 1986.

Economic impact of regulation on individuals, consumers, and businesses

The new Superfund Excise Tax imposed under title II of the bill could involve a slight impact on business costs and consumer prices; however, the new tax is imposed only at a low rate (0.08 percent). Under the destination principle generally used for excise taxes, the Superfund Excise Tax will not apply to exports. The committee amendment also exempt from the new tax the sale or lease of tangible personal property by the United States or any other governmental entity or by a tax-exempt organization (unless the transaction is part of an unrelated trade or business).

The extension under the committee amendment of the petroleum and chemical feedstock excise taxes at present law rates will not have any overall impact on business costs or consumer prices. The committee amendment expands the present law exemptions from the tax on chemical feedstocks to include exports of taxable chemicals, substances to produce a animal feed, and certain recycled metals (nickel, chromium or cobalt which is diverted, recovered or produced from solid waste or recovered materials, but not to imported recycled metals).

The committee amendment extends the current petroleum and chemical feedstock taxes for 5 years (through September 30, 1990), and imposes the new Superfund Excise Tax for the 5-year period (January 1, 1986 through December 31, 1990). The proceeds (amounts equivalent to revenues from these taxes) are to be deposited in the Superfund, to provide financing for Federal cleanup efforts of hazardous waste sites. The committee amendment also repeals the waste disposal excise tax and the associated Post-closure Liability Trust Fund. Finally, the committee amendment expands the tax-exempt industrial development bond financing to include certain hazardous waste treatment facilities.

Impact on personal privacy

Title II of the bill generally does not relate to the personal privacy of individuals.

Determination of the amount of paperwork

The new Superfund Excise Tax imposed under the committee amendment (title II of the bill) will involve some increase in paperwork for those subject to the tax. However, since the new tax is to be reported annually in accordance with the taxpayer's accounting year and is to be calculated using the taxpayer's existing accounting records, the net impact on the taxpayers should be minimal. A new Federal excise tax form may need to be filed.

B. Other Matters

Consultation with Congressional Budget Office on budget estimates

In accordance with section 403 of the Budget Act, the Committee on Finance advises that the Director of the Congressional Budget Office has examined the committee's budget estimates of the tax provisions of title II of the bill (as shown in Part III of this report) and agrees with the committee's budget estimates. The Director submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 23, 1985.

Hon. ROBERT PACKWOOD,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the Superfund Revenue Act of 1985, an amendment in the nature of a substitute to Title II of S. 51, the Superfund Improvement Act of 1985, as ordered reported by the Senate Committee on Finance on May 16, 1985.

S. 51 would authorize, amend and expand Public Law 96-510, the Comprehensive Environment Response, Compensation, and Liability Act of 1980 (CERCLA). The budget effects of S. 51 as amended are shown in Table 1.

Under current law, the taxes imposed under CERCLA to fund the Superfund will expire September 30, 1985. S. 51, as ordered reported by the Senate Committee on Finance, would extend these taxes and would impose a new one. The excise taxes on crude oil and petroleum products and on chemical feedstocks would be extended at current rates through September 30, 1990. The bill would impose a new tax, the Superfund Excise Tax, on the sale or lease of personal property, in connection with a trade or business, by the manufacturer. A tax rate of 0.08 percent would be applied to the gross sales price or lease payments. Manufacturers with $5 million or less in taxable sale amounts, items sold or leased by state and local governments or by tax-exempt institutions, and exported goods would be exempt from the tax.

The amended Title II would repeal the Post-Closure Liability Trust Fund, effective October 1, 1985. Amounts in the Trust fund at that time would be transferred to the Superfund.

The amendment directs the General Accounting Office to study alternative ways to fund the Superfund, and to report to the Committee on Finance and House Committee on Ways and Means by January 1, 1988.

The committee amendment would also allow state and local governments to issue tax-exempt industrial development bonds to finance facilities for the treatment of hazardous waste. This provision would be effective on the date of the bill's enactment.

Table 1.—Budget Effects of S. 51 as Amended by the Committee on Finance

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated spending effect:					
Authorization level	602	1,228	1,318	1,415	1,520
Outlays	216	646	1,015	1,264	1,413

Table 1.—Budget Effects of S. 51 as Amended by the Committee on Finance—Continued

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated revenue effects:					
Extend excise tax on crude oil and petroleum products	38	42	42	42	42
Extend excise tax on chemical feedstocks	219	240	251	261	270
Impose new Superfund excise tax	344	946	1,025	1,112	1,208
Total excise taxes, gross	602	1,228	1,318	1,415	1,520
Total excise taxes net of income tax offsets	452	921	988	1,061	1,140
Authorize industiral revenue bonds for hazardous waste facilities	−9	−18	−31	−43	−57
Total net revenues	443	903	957	1,018	1,083
Estimated total budget effects:					
Revenues	443	903	957	1,018	1,083
Outlays	216	646	1,015	1,264	1,413
Increase (+) or decrease (−) in deficit	−227	−257	58	246	330

NOTE. The above estimates are relative to current law.

When compared to the CBO scorekeeping baseline, the net revenue increase under S. 51 would range from $243 million in 1986 to $842 million in 1990. The increase relative to the baseline is smaller than that shown in the table above because the baseline assumes extension of Superfund taxes at current rates. For purposes of this estimate, authorizations are assumed to equal gross excise tax revenues each year. Revenues collected under the Post-closure Liability Trust Fund tax are assumed to be credited to the Superfund in 1986.

On March 1, 1985, CBO prepared a cost estimate for S. 51, the Superfund Improvement Act of 1985, as ordered reported by the Senate Committee on Environment and Public Works. Title I of that bill would have authorized appropriations from the general fund of $206 million each year through 1990. As reported by the Committee on Finance, S. 51 would not authorize the transfer of any general funds to the Superfund. Moreover, the committee's amendment would also have the effect of eliminating the victim assistance demonstration program in S. 51, because this program was to be financed only through general fund appropriations to the Superfund. Estimated outlays are different because of these changes. In addition, the transfer of amounts from the Post-closure Liability Trust Fund to the Superfund will result in slightly higher outlays from the fund.

The amendment in the nature of a substitute to Title II of S. 51 will not change any of the provisions in Title I that affect the budgets of state and local governments.

If you wish further details on this estimate, please feel free to contact me.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

New budget authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by title II of the bill involve no new budget authority.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by title II of the bill will involve increased tax expenditures (relating to the provision expanding the industrial development bond definition to include hazardous waste treatement facilities) of $158 million over fiscal years 1986-90 (see Part III for year-by-year amounts). The excise tax provisions of the committee amendment do not involve expenditures as currently defined.

V. CHANGES IN EXISTING LAW MADE BY TITLE II OF THE BILL, AS REPORTED

In the opinion of the Committee on Finance, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the provisions of title II of S. 51, as reported by the committee).

VI. ADDITIONAL VIEWS OF SENATOR BOB DOLE

I strongly support the reauthorization of Superfund, because I believe we have an obligation to make sure that hazardous wastes do not permanently damage the environment or the health or our citizens. In addition, I think a compelling case has been made that the hazardous waste problem is so widespread, and the potential cost of cleanup so uncertain, that a substantial increase in the size of the hazardous waste cleanup fund is warranted. For these reasons I voted to report this legislation out of the Finance Committee.

Nevertheless, I do have strong reservations about the approach we are taking in this bill. Both in terms of the amount of money we are spending and the way we are rising it, fiscal restraint has been given short shrift. I think we could do better.

FUNDING LEVEL

In 1980 Superfund was authorized at a level of about $1.5 billion over five years. That initial authorization has enabled us to begin the cleanup process, to learn more about the process and technology of hazardous waste cleanup, and to get a better idea of the costs involved. Although there remains considerable disagreement on the amount of funding that is needed and the pace at which it can be spent effectively, there is no dispute that the problem requires a significantly larger commitment of resources than we made in 1980. Accordingly, I supported the Administration's recommendation for a $5.3 billion program over the next five years. That is about three-and-a-half times larger than the program commitment we made in 1980.

At the same time, I do not believe the case has been made for the $7.5 billion program recommended by the Environment Committee and funded by the Finance Committee. We need to know a lot more about the cost of effective cleanup, and about how far we have to go to ensure the public health and safety with regard to a particular hazardous waste site, before we can be sure that $7.5 billion can be spent intelligently on this problem in the next five years. I am willing to defer to the expertise of the Environmental Protection Agency on the funding question, since they are the ones in charge of the cleanup, and they have the most direct knowledge of the costs and problems involved.

Finally, at a time of severe fiscal stress, I think we have to be cautions in setting funding levels for any program: however worthy the goal. We cannot afford to get let enthusiasm for a very popular and important program cloud our judgment as to what we can and should spend on that program. We should have agreed to raise $5.3 billion, and subject requests for more funds to the appropriations process.

TAX INCREASE

I also am uncomfortable with establishing a wholly new, broad-based revenue source to finance this higher funding level for Superfund. As I said at the time the Committee made its decision to adopt a manufacturers' excise tax, the fact that a new tax starts out with a low rate and a limited purpose is no guarantee it will stay that way. The entire income tax system started out with similar limitations, and that did nothing to stop its expansion.

I understand the desire to spread the burden of financing Superfund a bit more broadly, while still maintaining a relationship between the harzardous waste problem and the payors of the tax. In this case, the theory is that manufacuring activity in general is the source of the hazardous waste problem. But if we take that argument to its extreme, we ought to say that hazardous waste is a byproduct of an advanced industrial society—in which case the tax ought to be broadened even further.

But I am unwilling to go to that extreme at this time, because it seems to me that doing so opens the door to significant new taxes or increases in existing taxes. That is not what the economy needs right now. Further, I do not think it is a coincidence that the Committee found it easy to vote for a $7.5 billion program when that program is largely funded by a very small tax on a large number of manufacturers. I fear that coupling this broad new tax with a popular program both removes considerations of fiscal restraint from our deliberations and guarnatees that this tax bill expend by leaps and bounds in the not too distant future.

I cannot, then, endorse this new tax. Let me reiterate that I strongly support the Superfund, and I will do whatever I can to ensure that it is reauthorized with much greater resources than it has had in the past. But we could have done better in structuring a revenue package for this bill that would raise the necessary funds without opening the door to an endlessly expanding program.

VII. ADDITIONAL VIEWS OF SENATOR BOB DOLE AND SENATOR DAVID DURENBERGER

[At the markup of the Superfund legislation, the Finance Committee agreed to include in the record an exchange of comments between Senator Durenberger, Senator Dole, and a representative of the Treasury Department.]

Senator Durenberger. I would like to ask the representative from Treasury some questions on one particular chemical feedstock. The chemical is xylene and some people seem to be a bit confused over the exact definition of xylene for the purpose of taxation.

Xylene comes in different forms, called isomers. You start with a mixed stream of these isomers from the refinery, which, of course, is a taxable chemical. But then the refiner can separate out the individual isomers. The issue is whether or not the isomers are taxable when they are sold or used in the manufacture of more complex chemicals.

The Treasury's proposed regulations say that xylene isomers are taxable when they are sold or used. Isn't it true that regarding xylene in the proposed regulations that the xylene isomers are taxable at their use or sale, Mr. Rollyson?

Mr. Rollyson. That is correct, Senator.

Senator Durenberger. Have you been collecting taxes on the sale of isomers?

Mr. Rollyson. Yes, we have.

Senator Durenberger. Then any retroactive change to the definition of xylene which excluded isomers, but made the separation of isomers a taxable event, would require giving back the money to those who have already paid it and making someone else pay those taxes instead, is that correct?

Mr. Rollyson. Well, we would have to refund the previousl paid taxes. It would be more difficult to justify imposing the tax retroactively on other taxpayers.

Senator Durenberger. Mr. Chairman, last year the Ways and Means Superfund bill changed the definition of xylene to exclude taxing the use or sale of the isomers. If this were to happen this year, we would be changing an existing industry practice. Also, I would like to point out that Congress would be getting involved in existing industry contracts. I think that would be very bad tax policy and very unfair to retroactivity change the definition from that found in the proposed Treasury regulations.

The Chairman. Thank you.

Senator Dole. Mr. Chairman, I was aware of this issue last year. In addition to those reasons mentioned by Senator Durenberger, I opposed the changes made to the Superfund chemical xylene in the House bill last year because it changed the definition of xylene.

That change of definition would have reversed the relative position of producers and purchasers in regard to the Superfund tax on xylene. In addition, Congress would have been intervening, or worse yet, overturning commercial contracts. For these reasons, I will continue to favor the Treasury Department's proposed definition of xylene and will oppose any legislative change of that definition.

The CHAIRMAN. Thank you.

VIII. ADDITIONAL VIEWS OF SENATOR WILLIAM ARMSTRONG

Look before you leap!

That's my advice to Senators before they rush to vote for S. 51.

This bill provides a needed increase in funding for cleanup of hazardous wastes. But the Finance Committee recommends paying the bill by establishing a Manufacturers Environmental Excise Tax [MEET] . . . in effect a Value Added Tax, albeit a bowdlerized version . . . a questionable idea for at least three reasons.

First, the VAT is a new kind of federal tax, a tax about which many thoughtful persons have serious doubts. Such a levy is desirable, some say, because it taxes consumption rather than productivity and thrift. But a Value Added Tax also is, by its very nature, an insidious, hidden tax . . . almost invisible to the ultimate consumers who pay the bill. So it is an easy and tempting source of revenue for the government. Small changes in the VAT raise large amounts of revenue while disturbing few taxpayers. So once established the VAT could easily be used and abused to finance large increases in federal spending. Income taxes are more visible to individual taxpayers; therefore increases are inherently more difficult to legislate because of the direct, personal effect on individual taxpayers and hence provides a valuable constraint on expansion of federal spending.

Second, this bill taxes a specific segment of the economy—manufacturing—in order to fill a trust fund dedicated to a public purpose of virtually universal benefit. In the past, Congress has usually, and in my opinion wisely, linked such trust fund revenues and benefits. Thus revenues generated by highway users are spent to build and maintain highways; taxes on airline tickets finance construction of airports; excise taxes on plywood pay for reforestation, etc.

Third, the VAT will probably be very inefficient. The cost of administration and supervision will be disproportionate to the revenue raised.

So before the Senate acts on this legislation, I intend to consider other possible options. I invite Senators to join me in thinking about the implications of this tax and trust fund concept.

BACKGROUND

I support strengthening the Hazardous Substance Response Trust Fund (Superfund), and voted to report the bill from Finance Committee for that reason.

This country faces a very serious hazardous waste disposal problem. As mentioned in the report of the Environment and Public Works Committee, modern chemical technology has contributed greatly to this Nation's standard of living, but has left a legacy of hazardous substances and wastes which pose a serious threat to human health and the environment.

One of the most pressing threats is groundwater contamination. The Environmental Protection Agency (EPA) reports that one in every three large groundwater systems and one in every six supplies serving less than 10,000 people is contaminated by volatile chemicals. Many large cities—Tucson, Memphis, and Miami among them—rely entirely on groundwater supplies, as do most rural areas. The impact is well framed by the problems with the groundwater supply for Long Island, New York, where contamination affects supplies drawn by three million people.

We must act quickly to remove or detoxify the numerous abandoned hazardous sites that imperil citizens and natural resources. While toxic waste clean-up should be a top national priority, there has not been adequate progress in cleaning up hazardous waste sites. Of the funds so far committed to Superfund, only a third have been used to actually remove or detoxify waste, not a satisfactory record. But I am encouraged by reports that EPA will now begin more actual clean-up activities in this second five year period of Superfund than in the first.

Significant increases for Superfund are therefore justified the additional dollars will be directed to actual clean-up. With more than 800 sites currently on the National Priorities List (NPL) there is substantial work remaining. The Office of Technology Assessment (OTA) estimates that as many as 10,000 sites require clean-up. It is imperative that a greater proportion of committed funds are provided for hazardous waste clean-up.

The reauthorization of Superfund in combination with the Resource Conservation and Recovery Act (RCRA) establishes a reasonably comprehensive federal response to the problem of hazardous waste control and elimination. The amendments to RCRA in 1984 strengthened regulation of hazardous waste disposal to the point where the Congressional Budget Office projects that industry will spend between $8 and $11 billion a year on improved waste technologies by 1990.

RCRA regulates the management and disposal of currently generated hazardous wastes, and Superfund is responsible for cleaning up abandoned hazardous waste sites where those responsible for the dumping can no longer be identified. Consequently, there is great controversy about how to best finance Superfund. Since no clear liability can be established, who should pay clean-up costs? Today 12 oil and chemical companies pay 70% of Superfund excise taxes. Such a narrow tax base cannot possibly justify a proposed four-fold increase in expenditures.

The Senate Finance Committee has approved an across the board manufacturer's excise tax (small manufacturers with sales of less than $5 million are exempted). The underlying premise of this new tax is that manufacturer's produce toxic pollution and should therefore pay clean-up costs.

While I agree that a broader tax source is needed, I am not sure the Committee's recommendation is entirely proper and may set a tax policy precedent the Committee will eventually regret; may fail to tax those who produce the greatest toxic waste; will be unecessarily difficult to administer, comply with and enforce; will lead to regrettable price distortions; and over time, this new tax will be vastly expanded to rival the growth in Social Security and income taxes.

SPECIFIC OBJECTIONS TO THE NEW MANUFACTURERS TAX

The Tax is Unfair; Polluters May Escape Taxation

Proponents for this new tax say it is designed to spread the burden of collecting revenues for Superfund among a broader base, specifically, all manufacturers with sales in excess of $5 billion. They argue that virtually all manufacturers produce some form of hazardous waste. Yet this tax is not a tax on hazardous waste. This new tax is based upon sales minus cost of goods sold—a value added tax. It disregards volume or degree of toxicity, and whether or not the manufacturer, in fact, produces hazardous wastes or for that matter treats otherwise properly disposes of them under RCRA.

Moreover, corporations are not the sole producers of toxic waste. State and federal government produce toxic waste, and in fact have been among the greatest culprits in not properly managing toxic waste dumps. Also a great degree of responsibility falls to consumers whose demands for these products results in their use and disposal. Therefore, is it appropriate to place so much of the financial responsibility on only one segment of the economy? I am skeptical.

An Inappropriate Trust Fund Tax?

I also doubt the idea of a value added tax for a dedicated trust fund such as Superfund. This new tax is dedicated to financing the clean-up of hazardous waste sites. The association between an abandoned hazardous waste site and the manufacturer that must partially fund its clean-up is at best circumstantial. This lack of a direct link in this trust fund between who pays and who receives the benefits (the entire nation in this case) is a departure from the general practice in other federal trust funds. For Example:

Airport and Airway Trust Fund.—Seven types of taxes are collected from various aviation activities, such as an 8% air passenger ticket tax and a $3 international departure tax. Funds raised are used for airport planning, construction, land acquisition and operations.

Deep Seabed Revenue Sharing Trust Fund.—An excise tax is to be collected on the imputed value of hard mineral resources removed from the deep seabed. Expenditures are to be made in accordance with an international treaty, yet to be agreed to.

Highway Trust FundA.—An excise tax exists on motor fuels, tires, trucks, trailers and certain other items. The funds are used for a wide variety of highway activities as construction, repair, safety and traffic control grants.

Inland Waterways Trust Fund.—Amounts in this trust fund are available as provided in appropriations acts, for construction and rehabilitation expenditure for navigation on the specified inland and intercoastal waterways. As excise tax is imposed on fuels used by vessels in these waterways.

Land and Water Conservation Fund.—This fund derives its funds from another trust fund, the Highway Trust Fund. Up to $1 million per year is transferred to this fund, equivalent to motorboat fuel taxes collected. The fund assists in the preservation and development of outdoor recreation resources.

National Recreation Boating Safety and Facilities Improvement Fund.—Revenues from the excise tax on sport fishing equipment and the excise taxes collected on motorboat fuels (other than the $1 million to the Land and Water Trust Fund), and import duties on fishing equipment, yachts and pleasure crafts go into this fund. Expenditures, subject to appropriations, go for the purpose of restoring and managing all species of fish sport and recreation.

Reforestation Trust Fund.—Import duties on plywood and lumber are the source of financing for this fund. The fund is used to supplement appropriations for reforestation and timber stock improvement on publicly owned national forests.

Tax Court Judges Survivors' Annuity Fund.—Judges electing to participate have 3% of their salaries withheld for a fund to pay annuities to deceased judges' surviving spouse and children.

Black Lung Disability Trust Fund.—A manufacturers' excise tax is imposed on domestically mined coal (other than lignite) which is sold or used by the producer. The trust fund pays benefits if there is no responsible operator among the miner's employers or if the responsible operator is in default.

Railroad Retirement System.—Six sources of income produce this fund, including payroll taxes on earning of railroad employers and employees, general revenues, and a tax levied on carriers only. Retirement and survivors' benefits are available to those who qualify.

With these funds generally there is a direct connection between who pays and who receives the benefit of the fund. In contrast, the new corporate Superfund tax departs from this practice. This is a questionable precedent to establish in federal tax policy.

Costly and Complicated to Administer

I am also concerned that the new tax is likely to be costly to administer. These complications are not warranted by the level of tax revenue to be raised. The U.S. Treasury Department has extensively studied value added taxes and concluded that it would cost $700 million annually to administer a VAT and require the addition of 20,000 new employees. Of course, the cost of administering this new Superfund Tax will be less than a national VAT tax, but it will still be substantial, especially in light of the revenue to be raised.

Price Distortions

As just one example of the complexity and price distortions the new tax will create, the same product can get to market through several different production routes, which reflcts that certain companies are more integrated than others. To their credit, the Committee anticipated the problem and directed the Treasury to devise intercompany pricing rules. But the fact that such a significant issue will be left to subsequent Treasury regulation without clear and specific guidance from Congress raises doubt about the wisdom of this tax.

The exemptions provided to manufacturers under $5 million in sales, for agricultural products and wholesalers and retailers will prove problematical. First, companies producing the same product, but whose total sales figures fall on different sides of the $5 million exemption level, will encounter price distortions. The smaller company gets their product exempted from the tax, while the larger company pays the tax. Second, a distortion will occur because of the exemptions provided to farms, wholesalers and retailers. They will not be able to take credit for the MEET paid by the manufacturer on goods they purchase. This will result in a price increase for them that cannot be passed on to the ultimate consumer.

Finally, it is argued that the MEET approved by the Finance Committee will lessen distortions because of the low rate applied. Nonetheless, it is equally true that the low rate does not warrant the cost, complications and price distortions of a MEET when used to finance a dedicated trust fund.

International Trade

As the Committee reported the bill, there are two provisions relating to trade. First, the proposed Superfund tax will not be applied to manufactured items that are exported, and will be applied to manufactured items entering the country. Second, feedstocks are to be exempt from the current feedstock taxes if they are exported.

This may be the correct policy from a trade standpoint, but in effect, we would encourage the production of hazardous wastes in this country for products used in other countries.

May Lead to Two New Taxes

In addition, I have a concern about the number of new taxes that will ultimately be enacted to finance Superfund. The Senate Finance Committee's actions in eliminating the option of a waste-end tax and substituting the broad based tax contemplates the addition of only one new tax—the MEET. The House of Representatives may proceed with a waste-end only or a combination of waste-end, general revenues and a broad based tax. The MEET tax is said to impact 30,000 manufacturers, many of whom may also have to bear a waste-end tax as well if the conference committee so decides. Thus the arrival of the MEET may inflict two new taxes on the manufacturing segment of the economy even though it's intent was to limit it to one.

Likely Be Expanded In The Future

The history of federal taxes clearly shows that once a tax is enacted, it inevitably expands. The first federal income tax imposed in the United States taxed less than one percent of the population and hauled in less than one percent of personal income. Today some 90% of American households pay federal taxes, and taxes account for nearly 18% of the nation's gross national product.

The Social Security tax is another example. The first Social Security tax was two percent tax on the first $3,000 of wages. Today, the combined employer-employee Social Security tax rate is 14% on the first $39,600 of wages. Where in 1940, the maximum tax paid was $60, the maximum tax exceeds $5,400 annually today. For many citizens and corporations, they pay more in Social Security taxes than they do in income taxes.

Now Congress is creating this new Superfund excise tax. Proponents argue that it is a low tax rate. That is true. The initial tax rate is only .08% of manufacturer's gross receipts minus cost of goods sold. If this tax is enacted, I predict that over time both the rate and the base will be substantially expanded.

CONCLUSION

For all these reasons, I oppose the enactment of a new Superfund Excise Tax. The question is, then, what is a better method of financing clean-up of toxic waste sites?

First, I support the current tax on petroleum and chemical feedstocks which are known to be toxic. Second, a waste-end tax—a tax charged on the disposal of toxic wastes—may also be reasonable. But clearly, these two new taxes will not generate the revenues necessary to pay for full and timely clean-up.

For this reason, I believe that using general revenues is appropriate in cleaning up abandoned hazardous waste sites. It should be among our highest national priorities to clean up these sites which threaten an estimated 10,000 communities and neighborhoods throughout the United States. With a federal budget which will spend nearly $5 trillion in the next five years, I believe our national priorities can and should be directed to accommodate the urgent need to clean up sites and accommodate the necessary spending within the federal budget without creating an entirely new tax.

W. L. ARMSTRONG.

[From the Congressional Record, May 24, 1985, p.S13791]

SEQUENTIAL REFERRAL OF S. 51, SUPERFUND

Mr. DOLE. Mr. President, I ask unanimous consent that S. 51, the Superfund Improvement Act of 1985, be sequentially referred to the Committee on the Judiciary for a period of time not to extend beyond June 14, 1985, for consideration of section 126, Contribution and Parties to Litigation; section 132, Judicial Review; section 133, Preenforcement Review; and, insofar as it may affect the Federal courts or relates to claims against the United States, section 138, Citizen Suits.

The PRESIDING OFFICER. Without objection, it is so ordered.

II

99TH CONGRESS
1ST SESSION

S. 51

[Report No. 99–73]

To extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. STAFFORD (for himself, Mr. CHAFEE, Mr. DURENBERGER, Mr. HUMPHREY, Mr. HART, Mr. MOYNIHAN, Mr. MITCHELL, Mr. BAUCUS, Mr. LAUTENBERG, Mr. CRANSTON, Mr. BENTSEN, Mr. BRADLEY, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

MARCH 7 (legislative day, FEBRUARY 18), 1985

Reported by Mr. STAFFORD, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

APRIL 15, 1985

Ordered, referred to the Committee on Finance for the purpose of considering title II of the bill and any provisions relating to revenues for the Hazardous Substance Response Fund

MAY 23 (legislative day, APRIL 15), 1985

Reported by Mr. PACKWOOD, with amendments

[Omit the part in boldface brackets and insert the part in bold roman]

MAY 24 (legislative day, APRIL 15), 1985

Ordered, referred to the Committee on the Judiciary for a period not to extend beyond June 14, 1985, for consideration of section 126, section 132, section 133, and, insofar as it may affect the Federal courts or relates to claims against the United States, section 138

A BILL

To extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be referred to as the "Superfund Improvement Act of 1985".~~

~~TITLE I~~

~~INDIAN TRIBES~~

~~SEC. 101. (a) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—~~

~~(1) by striking "and" at the end of paragraph (31), striking the period at the end of paragraph (32), and adding a new paragraph as follows:~~

~~"(33) 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and";~~

~~(2) in paragraph (16) by striking "or" the last time it appears and by inserting before the semicolon~~

~~at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".~~

~~(b) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".~~

~~(c) Section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "or Indian tribe" after the phrase "political subdivision thereof" both times that phrase occurs, and by inserting "or Indian tribe" after the phrase "political subdivision" both times that phrase occurs.~~

~~(d) Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—~~

~~(1) in subsection (a) by inserting "or an Indian tribe" after "State";~~

~~(2) in subsection (f) by inserting after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation:"; by inserting "or Indian tribe" after "State" the fourth time that word appears; by adding before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe"; and by inserting "or the Indian tribe" after "State government";~~

~~(3) in subsection (i) by inserting "or Indian tribe" after "State" the first time it appears; and~~

~~(4) in subsection (j) by inserting "or Indian tribe" after "State" the first time it appears.~~

~~(c) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—~~

~~(1) in subsection (b) by inserting before the period at the end thereof the following: ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";~~

~~(2) in subsection (c)(2) by inserting "or Indian tribe" after "State";~~

~~(3) in subsection (f) by inserting "or Indian tribe" after "State"; and~~

~~(4) in subsection (i) by inserting after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".~~

~~(f) Section 112(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as rewritten by this Act) is amended by adding before the period at the end of the proviso the following: ", nor against an Indian tribe until the United States, in its capacity as trustee~~

~~for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this subsection".~~

~~(g) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new section:~~

~~"INDIAN TRIBES~~

~~"SEC. 116. The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding cooperation in establishing and maintaining national registries), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).".~~

~~COMMUNITY RELOCATION~~

~~SEC. 102. (a) The second sentence of paragraph (23) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after "not otherwise provided for," the phrase "costs of permanent relocation of residents where it is determined~~

~~that such permanent relocation is cost effective or may be necessary to protect health or welfare," and by striking out the semicolon at the end thereof and inserting in lieu thereof a period and the following: "In the case of a business located in an area of evacuation or relocation, the term may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and thirty days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, it may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974: *Provided*, That the costs of such assistance shall be paid from the Trust Fund;".~~

~~(b) Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before "authorized by subsection (b) of this section," the phrase "for permanent relocation or".~~

~~ALTERNATIVE WATER SUPPLIES~~

~~SEC. 103. Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is amended by striking the period at the end of paragraph~~

~~(30) and inserting in lieu thereof a semicolon; and by adding after new paragraph (33) the following new paragraph:~~

~~"(34) 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.".~~

~~STATE CREDIT~~

~~SEC. 104. (a) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "The President shall grant the State a credit against the share" and all that follows down through the end of such section 104(c)(3) and inserting in lieu thereof the following: "In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the President shall grant the State a credit for amounts expended or obligated by such State or by a political subdivision thereof after January 1, 1978, and before December 11, 1980, for any response action costs which are covered by section 111(a) (1) or (2) and which are incurred at a facility or release listed pursuant to section 105(8). Such credit shall have the effect of reducing the amount which the State would otherwise be required to pay in connection with assistance under this section.".~~

~~(b)(1) Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new sentence: "For the purposes of the last sentence of subsection (c)(3) of this sec-~~

~~tion, the President may enter into a contract or cooperative agreement with a State under this paragaraph under which such State will take response actions in connection with releases listed pursuant to section 105(8)(B), using non-Federal funds for such response actions, in advance of and without any obligation by the President of amounts from the Fund for such response actions.".~~

~~(2) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 if further amended by adding the following sentence: "The President shall grant the State a credit against the share of costs for which it is responsible under this paragraph for any reasonable, documented, direct out-of-pocket non-Federal funds expended or obligated by the State under a contract or cooperative agreement under the last sentence of subsection (d)(1).".~~

~~FUNDING OF REMEDIAL ACTION AT FACILITY OWNED BY A STATE OR POLITICAL SUBDIVISION BUT OPERATED PRIVATELY~~

~~SEC. 105. Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—~~

~~(1) by amending section 104(c)(3)(C)(ii) to read as follows:~~

~~"(ii) 50 per centum (or such greater amount as the President may determine appropriate,~~

~~taking into account the degree of responsibility of the State or political subdivision for the release) of the capital, future operation, and future maintenance costs of the response action relating to a release at a facility, primarily used for treatment, storage, or disposal, that was owned and operated by the State or a political subdivision thereof at the time of any disposal of hazardous substances is such facility. For the purpose of subparagraph (c)(ii) of this paragraph, the term 'facility' does not include navigable waters or the beds underlying those waters."; and~~

~~(2) by adding at the end thereof the following: "In the case of any State which has paid, at any time after the date of the enactment of the Superfund Improvement Act of 1985, in excess of 10 per centum of the costs of remedial action at a facility owned but not operated by such State or by a political subdivision thereof, the President shall use money in the Fund to provide reimbursement to such State for the amount of such excess.".~~

~~SELECTION OF REMEDIAL ACTIONS~~

~~SEC. 106. Section 104(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:~~

~~"(4)(A) The President shall select appropriate remedial actions determined to be necessary to carry out this section which, to the extent practicable, are in accordance with the national contingency plan and which provide for cost-effective response. In evaluating the cost-effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.~~

~~"(B) Remedial actions in which treatment which significantly reduces the volume, toxicity or mobility of the hazardous substances is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action, where practicable treatment technologies are available.~~

~~"(C) Remedial actions selected under this paragraph or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants from the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circum-~~

~~stances presented by the release or threatened release of such substance, pollutant, or contaminant.~~

~~"(D) No permit shall be required under subtitle C of the Solid Waste Disposal Act for the portion of any removal or remedial action conducted pursuant to this Act entirely onsite: *Provided*, That any onsite treatment, storage, or disposal of hazardous substances, pollutants, or contaminants shall comply with the requirements of subparagraph (C).~~

~~"(E) Subject to the requirements of this paragraph, the President shall select the appropriate remedial action which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.".~~

~~STATE AND FEDERAL CONTRIBUTIONS TO OPERATION AND MAINTENANCE~~

~~SEC. 107. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraphs:~~

~~"(5) For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level~~

~~that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period up to five years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.~~

~~"(6) During any period after the availability of funds received by the Trust Fund under sections 4611 and 4661 of the Internal Revenue Code of 1954 or section 221(b)(2) of this Act, the Federal share of the payment of costs for operation and maintenance pursuant to paragraph (3)(C)(i) or paragraph (5) of this subsection shall be from funds received by the Trust Fund under section 221(b)(1)(B).".~~

~~SITING OF HAZARDOUS WASTE FACILITIES~~

~~SEC. 108. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraph:~~

~~"(7) Effective four years after the date of enactment of this paragraph, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities~~

~~acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act with adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the twenty-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed.".~~

~~COOPERATIVE AGREEMENTS~~

~~SEC. 109. Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking all of the existing paragraph (other than that added by this Act) and substituting the following:~~

~~"(d)(1) Where the President determines that a State or political subdivision has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement and combine any existing cooperative agreements with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed from the Fund for the reasonable response costs and related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities authorized by this Act. Any contract made hereunder shall be~~

~~subject to the cost-sharing provisions of subsection (c) of this section.".~~

~~HEALTH-RELATED AUTHORITIES~~

~~SEC. 110. (a) Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(i)", by redesignating paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E), and by adding the following new paragraphs:~~

~~"(2) The Agency for Toxic Substances and Disease Registry shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Environmental Protection Agency, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.~~

~~"(3)(A) The Administrator shall perform a health assessment for each release, threatened release or facility on the National Priority List established under section 105. Such health assessment shall be completed not later than two years after the date of enactment of the Superfund Improvement Act of 1985 for each release, threatened release or facility proposed for inclusion on such list prior to such date of enactment or not later than one year after the date of proposal for inclusion on such list for each release, threatened release or facility proposed for inclusion on such list after such~~

~~date or enactment. The Administrator shall also perform a health assessment for each facility for which one is required under section 3005(j) of the Solid Waste Disposal Act and, upon request of the Administrator of the Environmental Protection Agency or a State, for each facility subject to this Act or subtitle C of the Solid Waste Disposal Act, where there is sufficient data as to what hazardous substances are present in such facility.~~

~~"(B) The Administrator may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator providing such information and requesting a health assessment. If such a petition is submitted and the Administrator does not initiate a health assessment, the Administrator shall provide a written explanation of why a health assessment is not appropriate.~~

~~"(C) In determining sites at which to conduct health assessments under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous substances, at which the~~

~~potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subparagraph (E).~~

~~"(D) Any State or political subdivision carrying out an assessment shall report the results of the assessment to the Administrator of such Agency, and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of such Agency shall include the same recommendation in a report on the results of any assessment carried out directly by the Agency, and shall issue periodic reports which include the results of all the assessments carried out under this paragraph.~~

~~"(E) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants~~

~~and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.~~

~~"(F) At the completion of each health assessment the Administrator shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, together with any recommendations for further action under this subsection or otherwise under this Act.~~

~~"(G) In any case in which a health assessment performed under this paragraph (including one required by section 3005(j) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act from persons causing or contributing to such release of such haz-~~

~~ardous substance or, in the case of multiple releases contributing to such exposure, to all such releases.~~

~~“(4) Whenever, in the judgment of the Administrator, it is appropriate on the basis of the results of a health assessment, the Administrator shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population. Whenever in the judgment of the Administrator it is appropriate on the basis of the results of such pilot study, the Administrator shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects for the population exposed to hazardous substances in a release or suspected release.~~

~~“(5) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.~~

~~“(6) The Administrator shall conduct a study, and report to the Congress within two years after the date of~~

~~enactment of the Superfund Improvement Act of 1985, on the usefulness, costs, and potential implications of medical surveillance programs as a part of the health studies authorized by this section. Such study shall include, at a minimum, programs which identify diseases for which an exposed population is at excess risk, provide periodic medical testing to screen for such diseases in subgroups of the exposed population at highest risk, and provide for a mechanism to refer for treatment individuals who are diagnosed as having such diseases.~~

~~"(7) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—~~

~~"(1) provision of alternative water supplies, and~~

~~"(2) permanent or temporarily relocation of individuals.~~

~~"(8) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the Presi-~~

~~dent or the Administrator of the Environmental Protection Agency to exercise any authority vested in the President or such Administrator under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.~~

~~“(9)(A) The Administrator shall, within six months after the date of enactment of the Superfund Improvement Act of 1985, prepare a list of at least one hundred hazardous substances which the Administrator, in his sole discretion, determines are those posing the most significant potential threat to human health due to their common presence at the location of responses under section 104 or at facilities on the National Priority List or in releases to which a response under section 104 is under consideration. Within twenty-four months after enactment, the Administrator shall prepare a list of an additional one hundred or more such hazardous substances. The Administrator shall not less often than once every year thereafter add to such list other substances which are frequently so found or otherwise pose a potentially significant threat to human health by reason of their physical, chemical, or biological nature.~~

~~“(B) For each such hazardous substance listed pursuant to subparagraph (A), the Administrator shall assess whether adequate information on the health effects of such substance~~

~~is available. For any such substance for which adequate information is not available (or under development), the Administrator shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Such program shall include, but not be limited to—~~

~~"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;~~

~~"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;~~

~~"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and~~

~~"(iv) where there is a possibility of obtaining human data, the collection of such information.~~

~~"(C) In assessing the need to perform laboratory and other studies, as required by subparagraph (B), the Administrator shall consider—~~

~~"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;~~

~~"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by subparagraph (F) of this paragraph; and~~

~~"(iii) such other scientific and technical factors as the Administrator may determine are necessary for the effective implementation of this subsection.~~

~~"(D) In the development and implementation of any research program under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator and consistent with such purpose, a research program~~

~~under this paragraph may be carried out using such programs of toxicological testing.~~

~~"(E) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Where this is not practical, the costs of such research programs should be borne by parties responsible for the release of the hazardous substance in question. To carry out such intention, the costs of conducting such a research program under this paragraph shall be deemed a cost of response for the purposes of recovery under section 107 of such costs from a party responsible for a release of such hazardous substance.~~

~~"(F) Based on all available information, including data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator shall prepare toxicological profiles sufficient to establish the likely effect on human health of each of the substances listed pursuant to subparagraph (A). Such profiles shall be revised and republished as necessary, but no less often than once every five years. Such profiles shall be provided to the States and made available to other interested parties.~~

~~"(10) All studies and results of research conducted under this subsection (other than health assessments) shall be~~

~~reported or adopted only after appropriate peer review. Such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry.~~

~~"(11) In the implementation of this subsection and other health-related authorities of this Act, the Administrator is authorized to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to toxic substances, through such means as the Administrator deems appropriate. Not later than one year after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall report to the Congress on the implementation of this paragraph.~~

~~"(12) For the purpose of implementing this subsection and other health-related authorities of this Act, the President shall provide adequate personnel to the Agency for Toxic Substances and Disease Registry, which shall be no fewer than one hundred full time equivalent employees.~~

~~“(13) The activities described in this subsection and section 111(c)(4) shall be carried out by the Agency for Toxic Substances and Disease Registry established by paragraph (1), either directly, or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of such Agency determines are capable of carrying out such activities. Such activities shall include the provision of consultations on health information, and the conduct of health assessments, including those required under section 3005(j) of the Solid Waste Disposal Act, health studies and registries.”.~~

~~(b) Section 111(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—~~

~~(1) by inserting “in accordance with subsection (n) of this section and section 104(i),” after “(4)”; and~~

~~(2) by striking “epidemiologic studies” and inserting in lieu thereof “epidemiologic and laboratory studies and health assessments”.~~

~~(c) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:~~

~~“(n) For fiscal year 1985, not less than $18,000,000 and, for each fiscal year thereafter, not less than 5 per~~

~~centum of all sums appropriated from the Trust Fund or $50,000,000, whichever is less, shall be directly available to the Agency for Toxic Substances and Disease Registry and used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i), including any such activities related to hazardous waste stored, treated, or disposed of at a facility having a permit under section 3025 of the Solid Waste Disposal Act. Any funds so made available which are not obligated by the beginning of the fourth quarter of the fiscal year in which made available shall be made available in the Trust Fund for other purposes.".~~

~~(d) Section 3005 of the Solid Waste Disposal Act is amended by adding the following new subsection:~~

~~"(j) EXPOSURE INFORMATION AND HEALTH ASSESSMENTS.—(1) Beginning on the date nine months after the enactment of the Solid Waste Disposal Act Amendments of 1984, each completed application for a permit under subsection (c) for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address—~~

~~"(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit,~~

~~including releases associated with transportation to or from the unit;~~

~~"(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under subparagraph (A); and~~

~~"(C) the potential magnitude and nature of the human exposure resulting from such releases.~~

~~The owner or operator of a landfill or surface impoundment for which a completed application for a permit under subsection (c) has been submitted prior to such date shall submit the information required by this paragraph to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after such date of enactment.~~

~~"(2) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by paragraph (1), together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Whenever in the judgment of the Administrator of such Agency, the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazard-~~

~~ous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator of the Agency for Toxic Substances and Disease Registry shall conduct a health assessment in connection with such facility in accordance with section 104(i)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and take other appropriate action with respect to such risks as authorized by section 104 (b) and (i) of such Act.~~

~~"(3) Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks of health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Diseases Registry, the Administrator, or the State (in the case of a State with an authorized program).".~~

~~(c) Section 104(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—~~

~~(1) striking "the Surgeon General of the United States" and inserting in lieu thereof "the Secretary of Health and Human Services";~~

~~(2) inserting in the second sentence thereof after "of said Agency" the following: "(hereinafter in this subsection referred to as 'the Administrator')";~~

~~(3) striking "chromosomal testing" in subparagraph (D) and inserting in lieu thereof "appropriate testing".~~

~~PUBLIC PARTICIPATION~~

~~SEC. 111. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:~~

~~"(j) Before selection of appropriate remedial action to be undertaken by the United States or a State or before entering into a covenant not to sue or to forebear from suit or otherwise settle or dispose of a claim arising under this Act, notice of such proposed action and an opportunity for a public meeting in the affected area, as well as a reasonable opportunity to comment, shall be afforded to the public prior to final adoption or entry. Notice shall be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposal and alternative proposals considered.".~~

~~LOVE CANAL PROPERTY ACQUISITION~~

~~SEC. 112. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection as follows:~~

~~"(k) In determining priorities among releases and threatened releases under the National Contingency Plan and in carrying out remedial action under this section, the Administrator shall establish a high priority for the acquisition of all properties (including nonowner occupied residential, commerical, public, religious, and vacant properties) in the area in which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner occupied residences have been acquired pursuant to such determination.".~~

~~NATIONAL CONTINGENCY PLAN—HAZARD RANKING SYSTEM~~

~~SEC. 113. Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(a)" immedately following "105." and by adding the following at the end thereof:~~

~~"(b) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Improvement Act of 1985 relating to the selection of remedial action.~~

~~“(c) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985 and such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue to full force and effect.”.~~

~~STATE AND LOCAL GOVERNMENT LIABILITY~~

~~SEC. 114. Section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting “(1)” after “(d)” and adding the following new language:~~

~~“(2) No State or local government shall be liable under this title for costs or damages as a result of nonnegligent~~

~~actions taken in response to an emergency created by the release of a hazardous substance, pollutant, or contaminant generated by or from a facility owned by another person.".~~

~~CONTRACTOR INDEMNIFICATION~~

~~SEC. 115. Section 107(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after paragraph (1) the following new paragraph and redesignating the succeeding paragraph accordingly:~~

~~"(2) The Administrator may, in contracting or arranging for response action to be undertaken under this Act, agree to hold harmless and indemnify a contracting party against claims, including the expenses of litigation or settlement, by third persons for death, bodily injury or loss of or damage to property arising out of performance of a cleanup agreement to the extent that such claim does not arise out of the negligence of the contracting party.".~~

~~DIRECT ACTION~~

~~SEC. 116. (a) Section 108 (c) and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended to read as follows:~~

~~"(c) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judg-~~

~~ment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.~~

~~"(d) The total liability under this Act of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Act: *Provided,* That nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim: *Provided further,* That nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under section 107 or 111 of this Act or other applicable law.".~~

~~(b) Section 108(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "Financial responsibility~~

~~may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".~~

~~VICTIM ASSISTANCE PROGRAM~~

~~Sec. 117.~~

~~FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES~~

~~Sec. 118. Section 111(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before the period a colon and the following: "*Provided,* That money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.".~~

~~STATUTE OF LIMITATIONS~~

~~Sec. 119. Section 112(d) of the Comprehenisve Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:~~

~~"(d) No claim may be presented, nor may any action be commenced, under this title—~~

~~"(1) for the costs of response, unless that claim is presented or action commenced within three years after the date of completion of the response action;~~

~~"(2) for damages under subparagraph (C) of section 107(a), unless that claim is presented or action commenced within three years after the date on which final regulations are promulgated under section 301(c) or within three years after the date of the discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later; or~~

~~"(3) for any other damages, unless that claim is presented or action commenced within three years after the date of the discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained in this paragraph shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him. No claim may be presented or action be commenced under this para-~~

~~graph for any damages if, prior to the date of enactment of the Superfund Improvement Act 1985, the statute of limitations which would otherwise apply under this paragraph has expired.".~~

~~JUDICIAL REVIEW~~

~~"SEC. 120. Section 113(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:~~

~~"Sec. 113. (a)(1) Review of any regulation promulgated under this Act may be had upon application by any interested person in the Circuit Court of Appeals of the United States for the District of Columbia or in any United States court of appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation. Any such application shall be made within one hundred and twenty days from the date of promulgation of such regulation, or after such date only if such application is based solely on grounds which arose after such one hundred and twentieth day. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.~~

~~"(2)(A) If applications for review of the same agency action have been filed in two or more United States courts of appeals and the Administrator has received written notice of the filing of the first such application more than thirty days~~

~~before receiving written notice of the filing of the second application, then the record shall be filed in that court in which the first application was filed. If applications for review of the same agency action have been filed in two or more United States courts of appeals and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States courts that applications have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the Administrator, the Administrative Office thereupon shall select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the United States court of appeals which remanded such action.~~

~~"(B) Where applications have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.~~

~~"(C) Any court in which an application with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such application to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.".~~

~~CLARIFICATION OF PREEMPTION LANGUAGE~~

~~SEC. 121. Section 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after the first sentence thereof the following: "Nothing in this section shall preclude any State from requiring any person to contribute to a fund to pay (1) the costs of the non-Federal share or other State responsibilities under section 104(c)(3), or (2) the direct and indirect costs of response actions at facilities or locations~~

~~where the President has not responded under this Act or in addition to response actions taken under this Act, or, (3) any other management, enforcement, or administration activities related to response actions or other cleanup of hazardous substances or hazardous wastes.".~~

~~FEDERAL FACILITIES~~

~~SEC. 122. Section 115 of the Comprehensive Environmental, Compensation, and Liability Act of 1980 is amended by inserting before the period at the end thereof a colon and the following: "*Provided*, That with respect to a Federal facility or activity for which such duties or powers are delegated to an officer, employee or representative of the department, agency or instrumentality which owns or operates such facility or conducts such activity, the concurrence of the Administrator (and the responsible State official where a cooperative agreement has been entered into) shall be required for the selection of appropriate remedial action and the administrative order authorities of section 106(a) are hereby delegated to the Administrator".~~

~~ADMINISTRATIVE CONFERENCE RECOMMENDATION~~

~~SEC. 123. The Congress finds that recommendation 84-4 of the Administrative Conference of the United States (adopted June 29, 1984), is generally consistent with the goals and purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and that the Administrator should consider such recommendation and~~

~~implement it to the extent that the Administrator determines that such implementation will expedite the cleanup of hazardous substances which have been released into the environment.~~

~~AUTHORIZATION OF APPROPRIATIONS~~

~~SEC. 124. (a) Section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "as provided in this section" in subsection (a); striking paragraphs (2) and (3) of subsection (b); and by striking subsection (c).~~

~~(b) Section 303 of the Comprehensive Environmental Compensation and Liability Act of 1980 is amended to read as follows:~~

~~"AUTHORIZATION OF APPROPRIATIONS~~

~~"SEC. 303. (a) There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Emergency Response Fund for fiscal year—~~

~~"(A) 1981, $44,000,000,~~

~~"(B) 1982, $44,000,000,~~

~~"(C) 1983, $44,000,000,~~

~~"(D) 1984, $44,000,000,~~

~~"(E) 1985, $44,000,000,~~

~~"(F) 1986, $206,000,000,~~

~~"(G) 1987, $206,000,000,~~

~~"(H) 1988, $206,000,000,~~

~~"(I) 1989, $206,000,000, and~~

~~"(J) 1990, $206,000,000,~~

~~plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A) through (I) as has not been appropriated before the beginning of the fiscal year involved.".~~

~~"(b) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—~~

~~"(1) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and~~

~~"(2) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.~~

~~"(C) EXPENDITURES FROM RESPONSE TRUST FUND.—~~

~~"(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof of this Act, as in effect on the date of the enactment of the Superfund Improvement Act of 1985, including—~~

~~"(A) response costs,~~

~~“(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,~~

~~“(C) claims for injury to, or destruction or loss of, natural resources, and~~

~~“(D) related costs described in section 111(c) of this Act.~~

~~“(2) LIMITATIONS ON EXPENDITURES.—At least 85 per centum of the amounts appropriated to the Response Trust Fund shall be reserved—~~

~~“(A) for the purposes specifed in paragraphs (1), (2), and (4) of section 111(a) of this Act, and~~

~~“(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).~~

That this Act may be referred to as the “Superfund Improvement Act of 1985”.

TITLE I

INDIAN TRIBES

SEC. 101. (a) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by striking “and” at the end of paragraph (31), striking the period at the end of paragraph (32), and adding a new paragraph as follows:

"(33) 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and";

(2) in paragraph (16) by striking "or" the last time it appears and by inserting before the semicolon at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(b) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by section 109 of this Act, is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".

(c) Section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by section 114 of this Act, is amended by inserting "or Indian tribe" after the phrase "political subdivision" each time that phrase occurs.

(d) Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) in subsection (a) by inserting "or an Indian tribe" after "State";

(2) in subsection (f) by inserting after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation:"; by inserting "or Indian tribe" after "State" the fourth time that word appears; by adding before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such

Indian tribe"; and by inserting "or the Indian tribe" after "State government";

(3) in subsection (i) by inserting "or Indian tribe" after "State" the first time it appears; and

(4) in subsection (j) by inserting "or Indian tribe" after "State" the first time it appears.

(e) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) in subsection (b) by inserting before the period at the end thereof the following: ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";

(2) in subsection (c)(2) by inserting "or Indian tribe" after "State";

(3) in subsection (f) by inserting "or Indian tribe" after "State"; and

(4) in subsection (i) by inserting after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or ap-

pertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".

(f) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new section:

"INDIAN TRIBES

"SEC. 116. The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding cooperation in establishing and maintaining national registries), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).".

COMMUNITY RELOCATION

SEC. 102. (a) The second sentence of paragraph (23) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after "not otherwise provided for," the phrase "costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be *necessary to protect health or welfare," and by striking out the semicolon at the end thereof and inserting in lieu thereof a period and the following: "In the case of a business located in an area of evacuation or relocation, the term may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and thirty days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, it may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974: Provided, That the costs of such assistance shall be paid from the Trust Fund;".*

(b) Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before "authorized by subsection (b) of this section," the phrase "for permanent relocation or".

OFFSITE REMEDIAL ACTION

SEC. 103. Section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking the last sentence of the paragraph; striking the period after "welfare" the third time that word appears, and inserting a semicolon in lieu thereof, *striking "or" before "contaminated materials" and inserting "and associated" in lieu thereof; and inserting before the period after "environment" the third time that word appears, the following: ", as well as the offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.".*

ALTERNATIVE WATER SUPPLIES

SEC. 104. Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is amended by striking the period at the end of paragraph (30) and inserting in lieu thereof a semicolon; and by adding after new paragraph (33) the following new paragraph:

> *"(34) 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.".*

IMPROVEMENTS IN NOTIFICATION AND PENALTIES

SEC. 105. (a) Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—

> *(1) inserting "(1)" after "immediately notify"; and*
>
> *(2) inserting after "of such release" the following: ", and (2), in the case of any such release of a hazardous substance with a reportable quantity of one pound or less or any release of any other hazardous substance in a quantity determined by the President by regula-*

tion to potentially require emergency response, all State and local emergency response officials identified under any local contingency plan or otherwise likely to be affected by the release".

(b) Section 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—

(1) inserting after "appropriate agency of the United States Government" the following: "(or, in the case of a release to which subsection (a)(2) applies, any appropriate State or local emergency response official)"; and

(2) striking "$10,000 or imprisoned for not more than one year, or both." and inserting in lieu thereof "$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).".

(c) Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(g)(1) In addition to any other relief provided, whenever on the basis of any information available to the President the President finds that any person is in violation of subsection (a) or (b) of this section the President may assess

a civil penalty of not more than $10,000 for each failure to notify the appropriate agency. The penalty under this subsection shall increase to not more than $25,000 for a second violation by the same person, not more than $50,000 for a third violation by the same person, and not more than $75,000 for a fourth or subsequent violation by the same person.

"(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

"(3) In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

"(4) Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President

shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

"(5) The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and

any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(6) Action taken by the President pursuant to this subsection shall not affect or limit the President's authority to enforce any provision of this Act: Provided, however, That a failure to notify the appropriate agency which is penalized administratively under this subsection shall not be the subject of a criminal penalty under subsection (b) of this section.".

(d)(1) Section 103(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking "$20,000" and inserting "$25,000" in lieu thereof.

(2) Section 106(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking "$5,000" and inserting "$10,000" in lieu thereof.

HAZARDOUS SUBSTANCES INVENTORY

SEC. 106. Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by this Act, is further amended by adding after "Notice, Penalties" in the title to section 103: ", and Inventory". Section 103 is further amended by adding at the end thereof the following new subsections:

"(h)(1) Each facility owner or operator that (A)(i) manufactures a hazardous substance (as defined in section 101(14) of this Act), or (ii) stores six thousand kilograms or

more of such hazardous substance, and (B) has ten or more full-time employees, shall complete and distribute a Hazardous Substances Inventory form as published under paragraph (2) of this subsection within 180 days after the enactment of the Superfund Improvement Act of 1985 and every twenty-four months thereafter, or more often as changed circumstances require. For the purposes of this subsection, a mixture containing more than 1 per centum of any hazardous substance covered by this section shall be considered a hazardous substance.

"(2) The President shall publish the Hazardous Substances Inventory form in the Federal Register within sixty days after the date of enactment of the Superfund Improvement Act of 1985. Publication of such form shall be exempt from the requirements of the Paperwork Reduction Act and Office of Management and Budget Circular A–40 (title 5 of the Code of Federal Regulations, part 1320).

"(3) The Hazardous Substances Inventory form shall provide for submission of the following information for each hazardous substance:

"(A) the description of the use of the hazardous substance at the facility, including, but not limited to, the quantity of the hazardous substance produced or consumed at such facility;

"(B) the maximum inventory of the hazardous substance stored at the facility, the method of storage, and the frequency and methods of transfer;

"(C) for each of the following, the annual and monthly total emissions or discharge of each hazardous substance for the calendar year immediately preceding the submission of the Hazardous Substances Inventory form:

"(i) the stack or point-source emissions;

"(ii) the estimated fugitive or non point-source emissions of the hazardous substances;

"(iii) the discharge into the surface water or groundwater, the treatment methods, and the raw wastewater volumes and loadings; and

"(iv) the discharge into publicly-owned treatment works;

"(D) the quantity and methods of disposal of any wastes containing the hazardous substance, the method of onsite storage of such wastes, the location or locations of the final disposal site of such wastes, and the identity of the transporter of such wastes;

"(E) the month and year that the information on the Hazardous Substances Inventory was compiled and the name, address, and emergency telephone number of the person responsible for preparing the information.

For the purposes of this paragraph, facility owners and operators may utilize readily available data collected pursuant to other State and Federal environmental laws.

"(4) Each person who submits a form pursuant to the requirements of this subsection shall attach thereto a copy of the Material Safety Data Sheet, required pursuant to the Occupational Safety and Health Act, pertaining to the hazardous substance that is reported in the form.

"(5) The Hazardous Substances Inventory shall be distributed by the facility owner or operator to, at a minimum, the President; State and local emergency and medical response personnel; the State police, health and environmental departments; area police and fire departments; area emergency medical services; area hospitals; and area libraries.

"(6) The President, for the purposes of this subsection, shall establish a toll-free telephone number, operating twenty-four hours per day, that is computer accessible, to respond to telephone inquiries concerning the Hazardous Substances Inventory and the information contained therein. Within sixty days of establishment of such a telephone line, the President shall inform appropriate State and local officials.

"(7)(A) The President may verify the data contained in the Hazardous Substances Inventory form using the authority of section 104(e) of this Act.

"(B) Information submitted under this subsection shall be treated as information submitted under section 104(e) and shall be subject to the provisions of section 104(e)(2).

"(8) Any person who knowingly omits material information or makes any false material statement or representation in the Hazardous Substances Inventory, shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than one year, or both.

"(9) Nothing in this subsection shall be construed to limit the ability of any State to require submission of information related to hazardous substances, or to require additional distribution of the Hazardous Substances Inventory form from facilities operating within its borders.

"(i)(1) Every two years after the date of enactment of the Superfund Improvement Act of 1985, the National Toxicology Program, in consultation with appropriate Federal agencies, shall review new and existing chemicals and compile a list of substances to supplement those referred to in subsection (h), taking into account, at a minimum, the reactivity, toxicity, volatility, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, and production levels of the chemical.

"(2) Within one hundred and eighty days after publication of the list compiled by the National Toxicology Program, the President shall promulgate such list of substances as

those requiring preparation and distribution of the Hazardous Substances Inventory under this Act, unless the President demonstrates that a particular hazardous substance does not present a risk equal to or greater than those substances referred to in subsection (h)(1). In the event that the President decides not to list a hazardous substance, the President shall, with opportunity for public notice and comment, state the basis on which the hazardous substance was not considered to present a risk sufficient to warrant preparation and distribution of the Hazardous Substances Inventory.".

SCOPE OF PROGRAM

SEC. 107. (a) Section 104(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking that language between the word "environment" the third time it appears and the period and inserting in lieu thereof a period and the following: "The President shall give primary attention to those releases which may present a public health threat. The President may authorize the owner or operator of the vessel or facility from which the release or threat of release emanates, or any other responsible party, to perform the removal or remedial action if the President determines that such action will be done properly by the owner, operator, or responsible party".

(b) Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraphs:

"(3) The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

"(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

"(B) from products which are part of the structure of, and result in exposure within, a facility; or

"(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(4) Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section the President may respond to any release or threat of release if in the President's discretion it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.".

STATUTORY LIMITS ON REMOVALS

SEC. 108. Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "six months" and inserting "one year" in lieu thereof and inserting before "obligations" *the following: "or (C) continued response action is otherwise appropriate and consistent with permanent remedy,".*

STATE CREDIT

SEC. 109. (a) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "The President shall grant the State a credit against the share" and all that follows down through the end of such section 104(c)(3) and inserting in lieu thereof the following: "In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the President shall grant the State a credit for amounts expended or obligated by such State or by a political subdivision thereof after January 1, 1978, and before December 11, 1980, for any response action costs which are covered by section 111(a) (1) or (2) and which are incurred at a facility or release listed pursuant to section 105(8). Such credit shall have the effect of reducing the amount which the State would otherwise be required to pay in connection with assistance under this section.".

(b)(1) Section 104(d)(1) of the Comprenhensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new sentence: "For the purposes of the last sentence of subsection (c)(3) of this section, the President may enter into a contract or cooperative agreement with a State under this paragraph under which such State will take response actions in connection with re-

leases listed pursuant to section 105(8)(B), using non-Federal funds for such response actions, in advance of and without any obligation by the President of amounts from the Fund for such response actions.".

(2) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding the following sentence: "The President shall grant the State a credit against the share of costs for which it is responsible under this paragraph for any reasonable, documented, direct out-of-pocket non-Federal funds expended or obligated by the State under a contract or cooperative agreement under the last sentence of subsection (d)(1).".

FUNDING OF REMEDIAL ACTION AT FACILITY OPERATED BY A STATE OR POLITICAL SUBDIVISION

SEC. 110. Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by amending section 104(c)(3)(C)(ii) to read as follows:

"(ii) 50 per centum (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a po-

litical subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of subparagraph (C)(ii) of this paragraph, the term 'facility' does not include navigable waters or the beds underlying those waters."; and

(2) by adding at the end thereof the following: "In the case of any State which has paid, at any time after the date of the enactment of the Superfund Improvement Act of 1985, in excess of 10 per centum of the costs of remedial action at a facility owned but not operated by such State or by a political subdivision thereof, the President shall use money in the Fund to provide reimbursement to such State for the amount of such excess.".

SELECTION OF REMEDIAL ACTIONS

SEC. 111. Section 104(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(4)(A) The President shall select appropriate remedial actions determined to be necessary to carry out this section which, to the extent practicable, are in accordance with the national contingency plan and which provide for cost-effective response. In evaluating the cost-effectiveness of proposed alternative remedial actions, the President shall take into ac-

count the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(B) Remedial actions in which treatment which significantly reduces the volume, toxicity or mobility of the hazardous substances is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action, where practicable treatment technologies are available.

"(C) Remedial actions selected under this paragraph or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants from the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

"(D) No permit shall be required under subtitle C of the Solid Waste Disposal Act, section 402 or 404 of the Clean Water Act, or section 10 of the Rivers and Harbors Act of 1899, for the portion of any removal or remedial action conducted pursuant to this Act entirely onsite: Provided, That

any onsite treatment, storage, or disposal of hazardous substances, pollutants, or contaminants shall comply with the requirements of subparagraph (C).

"(E) Subject to the requirements of this paragraph, the President shall select the appropriate remedial action which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.".

STATE AND FEDERAL CONTRIBUTIONS TO OPERATION AND MAINTENANCE

SEC. 112. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraphs:

"(5) For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period up to five years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the ef-

fectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

"(6) During any period after the availability of funds received by the Trust Fund under sections 4611 and 4661 of the Internal Revenue Code of 1954 or section 221(b)(2) or section 303(b) of this Act, the Federal share of the payment of costs for operation and maintenance pursuant to paragraph (3)(C)(i) or paragraph (5) of this subsection shall be from funds received by the Trust Fund under section 221(b)(1)(B).".

SITING OF HAZARDOUS WASTE FACILITIES

SEC. 113. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraph:

"(7) Effective three years after the date of enactment of the Superfund Improvement Act of 1985, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act with adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes

that are reasonably expected to be generated within the State during the twenty-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed.".

COOPERATIVE AGREEMENTS

SEC. 114. Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking all of the existing paragraph (other than that added by this Act) and substituting the following:

"(d)(1) Where the President determines that a State or political subdivision has the capability to carry out any or all of the actions authorized in this section, the President may, in the discretion of the President and subject to such terms as the President may prescribe, enter into a contract or cooperative agreement and combine any existing cooperative agreements with such State or political subdivision (which may cover a specific facility or facilities) to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed from the Fund for the reasonable response costs and related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities authorized by this Act. Any contract made hereunder shall be

subject to the cost-sharing provisions of subsection (c) of this section.".

ACCESS AND INFORMATION GATHERING

SEC. 115. Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking "(2)" and inserting "(5)" in lieu thereof and by striking all of existing paragraph (1) and inserting in lieu thereof the following:

"(1) For the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title, any officer, employee, or representative of the President, duly designated by the President, or any duly designated officer, employee, or representative of a State, is authorized where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance—

"(A) to require any person who has or may have information relevant to (i) the identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility, or (ii) the nature or extent of a release or threatened release of a hazardous substance at or from a facility, to furnish, upon reasonable notice, information or documents relating to such matters. In addition, upon reasonable notice, such person either shall grant to appropriate representatives access at all reasonable times to inspect all documents or

records relating to such matters or shall copy and furnish to the representatives all such documents or records, at the option of such person;

"(B) to enter at reasonable times any establishment or other place or property (i) where hazardous substances are, may be, or have been generated, stored, treated, disposed of, or transported from, (ii) from which or to which hazardous substances have been or may have been released, (iii) where such release is or may be threatened, or (iv) where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title; and

"(C) to inspect and obtain samples from such establishment or other place or property or location of any suspected hazardous substance and to inspect and obtain samples of any containers or labeling for suspected hazardous substances. Each such inspection shall be completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. If any analysis is made

of such samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(2)(A) If consent is not granted regarding a request made by a duly designated officer, employee, or representative under paragraph (1), the President, upon such notice and an opportunity for consultation as is reasonably appropriate under the circumstances, may issue an order to such person directing compliance with the request, and the President may ask the Attorney General to commence a civil action to compel compliance.

"(B) In any civil action brought to obtain compliance with the order, the court shall, where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance: (i) in the case of interference with entry or inspection, enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection, unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or not in accordance with law; and (ii) in the case of information or document requests, enjoin interference with such information or document requests or direct compliance with orders to provide such information or documents, unless under the circumstances of the case the demand for

information or documents is arbitrary and capricious, an abuse of discretion, or not in accordance with law. The court may assess a civil penalty not to exceed $10,000 against any person who unreasonably fails to comply with the provisions of paragraph (1) or an order issued pursuant to paragraph (2).

"(3) Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

"(4) Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the President who is properly cleared.".

HEALTH-RELATED AUTHORITIES

SEC. 116. (a) Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(i)", by redesignating paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E), and by adding the following new paragraphs:

"(2) The Agency for Toxic Substances and Disease Registry shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Environmental Protection Agency, State officials, and local officials. Such

consultations to individuals may be provided by States under cooperative agreements established under this Act.

"(3)(A) The Administrator shall perform a health assessment for each release, threatened release or facility on the National Priority List established under section 105. Such health assessment shall be completed not later than two years after the date of enactment of the Superfund Improvement Act of 1985 for each release, threatened release or facility proposed for inclusion on such list prior to such date of enactment or not later than one year after the date of proposal for inclusion on such list for each release, threatened release or facility proposed for inclusion on such list after such date of enactment. The Administrator shall also perform a health assessment for each facility for which one is required under section 3019 of the Solid Waste Disposal Act and, upon request of the Administrator of the Environmental Protection Agency or a State, for each facility subject to this Act or subtitle C of the Solid Waste Disposal Act, where there is sufficient data as to what hazardous substances are present in such facility.

"(B) The Administrator may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other

methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator providing such information and requesting a health assessment. If such a petition is submitted and the Administrator does not initiate a health assessment, the Administrator shall provide a written explanation of why a health assessment is not appropriate.

"(C) In determining sites at which to conduct health assessments under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subparagraph (E).

"(D) Any State or political subdivision carrying out an assessment shall report the results of the assessment to the Administrator of such Agency, and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of such Agency shall include the same recommendation in a report on the results of any assessment carried out directly by the Agency, and shall issue periodic reports which include the

results of all the assessments carried out under this paragraph.

"(E) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

"(F) At the completion of each health assessment the Administrator shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, together with any recommendations for further action under this subsection or otherwise under this Act.

"(G) In any case in which a health assessment performed under this paragraph (including one required by section 3019 of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such releases.

"(4) Whenever, in the judgment of the Administrator, it is appropriate on the basis of the results of a health assessment, the Administrator shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population. Whenever in the judgment of the Administrator it is appropriate on the basis of the results of such pilot study, the Administrator shall conduct such full scale epidemiological or other health studies as may be necessary to determine the

health effects for the population exposed to hazardous substances in a release or suspected release.

"(5) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

"(6) The Administrator shall conduct a study, and report to the Congress within two years after the date of enactment of the Superfund Improvement Act of 1985, on the usefulness, costs, and potential implications of medical surveillance programs as a part of the health studies authorized by this section. Such study shall include, at a minimum, programs which identify diseases for which an exposed population is at excess risk, provide periodic medical testing to screen for such diseases in subgroups of the exposed population at highest risk, and provide for a mechanism to refer for treatment individuals who are diagnosed as having such diseases.

"(7) If a health assessment or other study carried out under this subsection contains a finding that the exposure

concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

"(1) provision of alternative water supplies, and

"(2) permanent or temporary relocation of individuals.

"(8) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President or the Administrator of the Environmental Protection Agency to exercise any authority vested in the President or such Administrator under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

"(9)(A) The Administrator shall, within six months after the date of enactment of the Superfund Improvement Act of 1985, prepare a list of at least one hundred hazardous substances which the Administrator, in his sole discretion, determines are those posing the most significant potential threat to human health due to their common presence at the

location of responses under section 104 or at facilities on the National Priority List or in releases to which a response under section 104 is under consideration. Within twenty-four months after enactment, the Administrator shall prepare a list of an additional one hundred or more such hazardous substances. The Administrator shall not less often than once every year thereafter add to such list other substances which are frequently so found or otherwise pose a potentially significant threat to human health by reason of their physical, chemical, or biological nature.

"(B) For each such hazardous substance listed pursuant to subparagraph (A), the Administrator (in consultation with other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Such program shall include, but not be limited to—

"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

"(iv) where there is a possibility of obtaining human data, the collection of such information.

"(C) In assessing the need to perform laboratory and other studies, as required by subparagraph (B), the Administrator shall consider—

"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by subparagraph (F) of this paragraph; and

"(iii) such other scientific and technical factors as the Administrator may determine are necessary for the effective implementation of this subsection.

"(D) In the development and implementation of any research program under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, in the discretion of the Administrator and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(E) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Where this is not practical, the costs of such research programs should be borne by parties responsible for the release of the hazardous substance in question. To carry out such intention, the costs of conducting such a research program under this paragraph

shall be deemed a cost of response for the purposes of recovery under section 107 of such costs from a party responsible for a release of such hazardous substance.

"(F) Based on all available information, including data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator shall prepare toxicological profiles sufficient to establish the likely effect on human health of each of the substances listed pursuant to subparagraph (A). Such profiles shall be revised and republished as necessary, but no less often than once every five years. Such profiles shall be provided to the States and made available to other interested parties.

"(10) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support

services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry.

"(11) In the implementation of this subsection and other health-related authorities of this Act, the Administrator is authorized to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to toxic substances, through such means as the Administrator deems appropriate. Not later than two years after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall report to the Congress on the implementation of this paragraph.

"(12) For the purpose of implementing this subsection and other health-related authorities of this Act, the President shall provide adequate personnel to the Agency for Toxic Substances and Disease Registry, which shall be no fewer than one hundred full time equivalent employees.

"(13) The activities described in this subsection and section 111(c)(4) shall be carried out by the Agency for Toxic Substances and Disease Registry established by paragraph (1), either directly, or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of such Agency determines are capable of carrying out such activities. Such activities shall include the provision of consulta-

tions on health information, and the conduct of health assessments, including those required under section 3019 of the Solid Waste Disposal Act, health studies and registries.".

(b) Section 111(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by inserting "in accordance with subsection (n) of this section and section 104(i)," after "(4)"; and

(2) by striking "epidemiologic studies" and inserting in lieu thereof "epidemiologic and laboratory studies and health assessments".

(c) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(n) For fiscal year 1986 and for each fiscal year thereafter, not less than 5 per centum of all sums appropriated from the Trust Fund or $50,000,000, whichever is less, shall be directly available to the Agency for Toxic Substances and Disease Registry and used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i), including any such activities related to hazardous waste stored, treated, or disposed of at a facility having a permit under section 3005 of the Solid Waste Disposal Act. Any funds so made available which are not committed by the be-

ginning of the fourth quarter of the fiscal year in which made available shall be made available in the Trust Fund for other purposes.".

(d) The last sentence of section 3019(b)(2) of the Solid Waste Disposal Act is amended to read as follows: "If so requested, the Administrator of such Agency shall conduct such health assessment.".

(e) Section 104(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—

(1) striking "the Surgeon General of the United States" and inserting in lieu thereof "the Secretary of Health and Human Services";

(2) inserting in the second sentence thereof after "of said Agency" the following: "(hereinafter in this subsection referred to as 'the Administrator')";

(3) striking "chromosomal testing" in subparagraph (D) and inserting in lieu thereof "appropriate testing".

PUBLIC PARTICIPATION

SEC. 117. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(j) Before selection of appropriate remedial action to be undertaken by the United States or a State or before entering

into a covenant not to sue or to forebear from suit or otherwise settle or dispose of a claim arising under this Act, notice of such proposed action and an opportunity for a public meeting in the affected area, as well as a reasonable opportunity to comment, shall be afforded to the public prior to final adoption or entry. Notice shall be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposal and alternative proposals considered.".

LOVE CANAL PROPERTY ACQUISITION

SEC. 118. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection as follows:

"(k) In determining priorities among releases and threatened releases under the National Contingency Plan and in carrying out remedial action under this section, the Administrator shall establish a high priority for the acquisition of all properties (including nonowner occupied residential, commerical, public, religious, and vacant properties) in the area in which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner occupied residences have been acquired pursuant to such determination.".

ADMINISTRATIVE ORDERS FOR SECTION 104(B) ACTIONS

SEC. 119. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection as follows:

"(l)(1) If the President determines that one or more responsible parties will properly carry out action under subsection (b) of this section, the President may enter into a consent administrative order with such party or parties for that purpose.

"(2) The United States district court for the district in which the release has occurred or threatens to occur shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $10,000 for each day in which such violation occurs or such failure to comply continues.".

NATIONAL CONTINGENCY PLAN—HAZARD RANKING SYSTEM

SEC. 120. Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(a)" immedately following "105." and by adding the following at the end thereof:

"(b) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Su-

perfund Improvement Act of 1985 relating to the selection of remedial action.

"(c) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985 and such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue to full force and effect.".

NATIONAL CONTINGENCY PLAN

SEC. 121. (a) Section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as redesignated by this Act, is amended by striking "at least four hundred of" when it appears.

(b) Section 105(8)(B) is further amended by striking the phrase "at least" following the word "facilities" the second time it appears and by inserting "A State shall be allowed to designate its highest priority facility only once." after the third full sentence thereof.

FOREIGN VESSELS

SEC. 122. Section 107(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking "(otherwise subject to the jurisdiction of the United States)".

STATE AND LOCAL GOVERNMENT LIABILITY

SEC. 123. Section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(d)" and adding the following new language:

"(2) No State or local government shall be liable under this title for costs or damages as a result of non-negligent actions taken in response to an emergency created by the release of a hazardous substance, pollutant, or contaminant generated by or from a facility owned by another person.".

CONTRACTOR INDEMNIFICATION

SEC. 124. Section 107(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after paragraph (1) the following new paragraph and redesignating the succeeding paragraph accordingly:

"(2) The Administrator may, in contracting or arranging for response action to be undertaken under this Act, agree to hold harmless and indemnify a contracting party against claims, including the expenses of litigation or settlement, by third persons for death, bodily injury or loss of or damage to property arising out of performance of a cleanup agreement to the extent that such claim does not arise out of the negligence of the contracting party.".

NATURAL RESOURCE DAMAGE CLAIMS

SEC. 125. (a) Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2)(A) The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

"(B) The Governor of each State shall designate the State officials who may act on behalf of the public as trustees

for natural resources under this Act and section 311 of the Clean Water Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship.

"(C) Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.

"(D) The President shall promulgate the regulations required under section 301 of this Act not later than six months after the enactment of the Superfund Improvement Act of 1985.".

(b) Section 111(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed

for response to threats to public health from releases or threatened releases of hazardous substances.".

(c) Section 111(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is repealed.

CONTRIBUTION AND PARTIES TO LITIGATION

SEC. 126. Section 107, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection to read as follows:

"(l)(1) In any civil or administrative action under this section or section 106, no claim for contribution or indemnification may be brought until after entry of judgment or date of settlement in good faith. Nothing in this subsection shall diminish the right of any person to bring an action for contribution or indemnification in the absence of a civil or administrative action under this section or section 106.

"(2) After judgment in any civil action under section 106 or under subsection (a) of this section, any defendant held liable in the action may bring a separate action for contribution against any other person liable or potentially liable under subsection (a). Such an action shall be brought in accordance with section 113. Except as provided in paragraph (4) of the subsection, this subsection shall not impair any right of indemnity under existing law.

"(3) When a person has resolved its liability to the United States or a State in a judicially approved good faith

settlement, such person shall not be liable for claims for contribution under paragraph (2) of this subsection regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others to the extent of any amount stipulated by the settlement.

"(4) Where the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in a good faith settlement, the United States or the State may bring an action for the remainder of the relief sought against any person who has not so resolved its liability. A person that has resolved its liability to the United States or a State in a good faith settlement may, where appropriate, maintain an action for contribution or indemnification against any person that was not a party to the settlement. In any action under this paragraph, the rights of a State or any person that has resolved its liability to the United States or a State shall be subordinate to the rights of the United States. Any contribution action brought under this paragraph shall be brought in accordance with section 113.".

FEDERAL LIEN

SEC. 127. Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(m)(1) All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property belonging to such person that are subject to or affected by a removal or remedial action.

"(2) The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act and shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113(e).

"(3) The lien imposed by this subsection shall not be valid as against any purchaser, holder of a security interest, or judgment lien creditor until notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided in sec-

tion 6323(h) of title 26, United States Code. This paragraph does not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

"(4) The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.".

DIRECT ACTION

SEC. 128. (a) Section 108 (c) and (d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(c) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or

operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

"(d) The total liability under this Act of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Act: Provided, That nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim: Provided further, That nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under section 107 or 111 of this Act or other applicable law.".

(b) Section 108(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses

which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

VICTIM ASSISTANCE DEMONSTRATION PROGRAM

SEC. 129. (a) Section 111(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "and" at the end of the paragraph (5); by striking the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and by adding the following new paragraph:

"(7) the costs of grants under subsection (m), not to exceed a total of $30,000,000 per fiscal year, to be provided out of funds received by the Trust Fund under section 303(b).".

(b) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(m)(1) In the case of any geographic area (as identified by the Agency for Toxic Substances and Disease Registry) for which a health assessment or other health study performed under section 104(i) indicates that—

"(A) there is a disease or injury for which the population of such area is placed at significantly increased risk as a result of a release of a hazardous substance;

"(B) such disease or injury has been demonstrated by peer reviewed studies to be associated (using sound scientific and medical criteria) with exposure to a hazardous substance; and

"(C) the geographical area contains individuals within the population who have been exposed to a hazardous substance in a release,

the State in which such area is located may apply to the Administrator of the Environmental Protection Agency to operate an experimental demonstration assistance program under this subsection.

"(2) From areas nominated under paragraph (1) the President shall select, during each of fiscal years 1986 and 1987, no less than five or more than ten areas for demonstration assistance programs under this subsection. Such selections shall be made in the discretion of the President, taking into account—

"(A) the experience of State and local governments in administering programs which deal with the regulation of toxic chemicals and hazardous substances; and

"(B) the representative nature of the hazardous substance releases and exposures in terms of the identities and toxic characteristics of the substances found, the manner and degree of exposure, the scientific and

medical method used to determine such exposure, and the seriousness and duration of the diseases or illnesses caused.

"(3) For each area selected under paragraph (2) the State shall establish and operate for a period of not less than three years or more than five years a program of medical assistance to individuals who, according to health assessments or other studies done under section 104(i) have been placed at significantly increased risk of disease or injury due to exposure to a hazardous substance from a release. The President shall make a grant for each such area in an amount of not less than $1,000,000 nor more than $10,000,000 per fiscal year (and a total for all such grants of not more than $30,000,000 per fiscal year), but in no event shall grants be made in fewer than five States.

"(4) Programs funded pursuant to this subsection shall not provide assistance in the case of any area or class of individuals in which a solvent responsible party who may be liable under section 107 is paying compensation for claims or otherwise providing medical assistance, comparable (though not necessarily identical in scope or duration) to assistance under this subsection. If a party has accepted liability for such claims or assistance, no assistance shall be available under this subsection even though the party may not have

commenced assistance at the time of an application by a State.

"(5) A program established and operated under this subsection shall provide the following assistance:

"(A) appropriate medical screening, examination and testing (in accordance with sound medical procedures) as necessary to determine the presence in individuals of the disease or injury for which the population of the geographic area is at significantly increased risk;

"(B) for individuals with no present symptoms of such disease or injury, a group medical benefits policy providing the reasonable costs of periodic medical screening, testing or examination (in accordance with sound medical procedures), as necessary to determine the presence of such symptoms; and

"(C) for individuals with present symptoms of such disease or injury (or who develop such symptoms)—

"(i) reimbursement of the out-of-pocket costs of related medical expenses in connection with such disease or injury previously incurred and not recovered from any other public or private source, and

"(ii) a group medical benefits insurance policy providing the reasonable costs of sound medical and surgical treatment and hospitalization resulting from such disease or injury (which according to health assessments or other health studies under section 104(i), is associated with exposure to a hazardous substance in a release in the geographical area). Such a policy shall be subject to an annual deductible of $500, with no copayment requirement or annual or lifetime limitation on expenditures other than those referred to in paragraph (3).

"(D) Such policies provided under subparagraphs (B) and (C) shall be secondary to, and provide for nonduplication of benefits with, any other policy or coverage, public or private, for which such individual is eligible. The benefits or coverage of such other policy shall be those determined to be in force as of thirty days prior to the date the State applies for area designation.

"(E) Assistance under this subsection shall be provided on the condition that the costs thereof in connection with any individual pursuing a claim against a potentially responsible party shall be repaid to the

Fund out of the proceeds of any award (including punitive damages) or settlement of such claim.

"(6)(A) The President, with the assistance of the Agency for Toxic Substances and Disease Registry, beginning January 1, 1987, shall submit annual reports to the Congress on the implementation and effectiveness of this victim assistance demonstration program, including an evaluation of the effectiveness of each of the State programs established under the subsection. The final report shall also address the relationship of this demonstration program to other public and private mechanisms that may exist to carry out the same or similar functions.

"(B) Each State selected to operate a demonstration program under this subsection shall submit to the President and the Congress, not later than January 1, 1990, a report on the implementation and effectiveness of its program.".

FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES

SEC. 130. Section 111(e)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before the period a colon and the following: "Provided, That money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the *federally owned facility is not the only potentially responsible party.".*

STATUTE OF LIMITATIONS

SEC. 131. (a) Section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking subsection (d) and relettering the following subsection.

(b) Section 113 of the of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(e)(1) No claim may be presented, nor may any action be commenced under this title—

"(A) for the cost of response, unless that claim is presented or action commenced within six years after the date of completion of the response action: Provided, however, That within the limitation period set out herein a State or the United States may commence an action under this title for recovery of any cost or costs at any time after such cost or costs have been incurred;

"(B) for damages under subparagraph (C) of section 107(a), unless that claim is presented or action commenced within six years after the date on which final regulations are promulgated under section 301(c) or within three years after the date of the discovery of the loss and its connection with the release in question

or the date of enactment of this Act, whichever is later; or

"(C) for any other damages, unless that claim is presented or action commenced within three years after the date of discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later: Provided, however, That the time limitations contained in this paragraph shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him nor against an Indian tribe until the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this subsection. No claim may be presented or action be commenced under this subparagraph for any damages, if prior to the date of enactment of the Superfund Improvement Act of 1985, the statute of limitations which would otherwise apply under this paragraph has expired.".

"(2) No action for contribution may be commenced under section 107 more than three years after the date of entry of judgment or the date of the good-faith settlement.

"(3) No action based on rights subrogated pursuant to section 112 by reason of payment of a claim may be commenced under this title more than three years after the date of payment of such claim.".

JUDICIAL REVIEW

SEC. 122. Section 113(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"SEC. 113. (a)(1) Review of any regulation promulgated under this Act may be had upon application by any interested person in the Circuit Court of Appeals of the United States for the District of Columbia or in any United States court of appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation. Any such application shall be made within one hundred and twenty days from the date of promulgation of such regulation, or after such date only if such application is based solely on grounds which arose after such one hundred and twentieth day. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

"(2)(A) If applications for review of the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of the first such application more than thirty days before receiving written notice of the filing of the second application, then the record shall be filed in that court in which the first application was filed. If applications for review of the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the President shall promptly advise in writing the Administrative Office of the United States courts that applications have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the President, the Administrative Office thereupon shall select the court in which the record shall be filed from among those identified by the President. Upon notification of such selection, the President shall promptly file the record in such court. For the purpose of review of agency action which has

previously been remanded to the President, the record shall be filed in the United States court of appeals which remanded such action.

"(B) Where applications have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

"(C) Any court in which an application with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such application to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.".

PRE-ENFORCEMENT REVIEW

SEC. 133. (a) Section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking the word "subsection" and inserting in lieu thereof the words "subsections," and inserting "and (f)" after "(a)".

(b) Section 113 is further amended by adding at the end thereof the following new subsections:

"(f) No court shall have jurisdiction to review any challenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a), in any action other than (1) an action under section 107 to recover response costs or damages or for contribution or indemnification; (2) an action to enforce an order issued under sections 104 or 106(a) or to recover a penalty for violation of such order; or (3) an action for reimbursement under section 106(b)(2).

"(g) In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. The only objection which may be raised in any such judicial action under section 106 or 107 is an objection to the response action which was raised with reasonable specificity to the President during the applicable period for public comment. In considering such objections, the court shall uphold the President's decision in selecting the response action unless the decision was arbitrary and capricious or otherwise not in accordance with law. If the court finds that the President's decision in selecting the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award the response

costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan. In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.".

(c) Section 106(b) of such Act is amended by inserting "(1)" after "(b)" and adding a new paragraph at the end thereof to read as follows:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within sixty days of completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

"(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within thirty days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

"(C) To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that it is not liable

for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order: Provided, however, That a petitioner who is liable for response costs under section 107(a) may recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in issuing the order was arbitrary and capricious or otherwise not in accordance with law. In any such case, the petitioner may be awarded all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.".

NATIONWIDE SERVICE OF PROCESS

SEC. 134. Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by this Act, is amended by adding the following new subsection:

"(h) In any action by the United States under section 104, 106, or 107, process may be served in any district where the defendant is found, or resides, or transacts business, or has appointed an agent for the service of process.".

PREEMPTION

SEC. 135. Section 114 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking subsection (c) and relettering the following subsection accordingly.

FEDERAL FACILITIES CONCURRENCE

SEC. 136. Section 115 of the Comprehensive Environmental, Compensation, and Liability Act of 1980 is amended by inserting before the period at the end thereof a colon and the following: "Provided, That with respect to a Federal facility or activity for which such duties or powers are delegated to an officer, employee or representative of the department, agency or instrumentality which owns or operates such facility or conducts such activity, the concurrence of the Administrator (and the responsible State official where a cooperative agreement has been entered into) shall be required for the selection of appropriate remedial action and the administrative order authorities of section 106(a) are hereby delegated to the Administrator".

FEDERAL FACILITIES COMPLIANCE

SEC. 137. Title I of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96–510) is amended by adding at the end thereof the following new section:

"FEDERAL FACILITIES

"SEC. 117. (a) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket which shall contain all information submitted under section 3016 of the Solid Waste Disposal Act regarding any Federal facility and notice of each subsequent action

taken under this Act with respect to the facility. Such docket shall be available for public inspection at reasonable times. Three months after establishment of the docket and every three months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding three-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

"(b) ASSESSMENT AND EVALUATION.—Not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility for which information is required under section 3016 of the Solid Waste Disposal Act. Following such preliminary assessment, the Administrator shall where appropriate—

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases.

"(2) include such facilities on the National Priorities List maintained under such plan. Such evaluation and listing shall be completed not later than twenty months after such date of enactment.

"(c) RIFS AND INTERAGENCY AGREEMENT.—

"(1) RIFS.—Within one year after the inclusion of any facility on the National Priority List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study for such facility.

"(2) INTERAGENCY AGREEMENT.—(A) Within six months after completion of each such remedial investigation and feasibility study, the Administrator shall review the results of such investigation and study and shall enter into an interagency agreement with the head of the department, agency, or instrumentality concerned for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. All such intergency agreements shall comply with the public participation requirements of section 104(j). Such agreement shall require that substantial continuous physical onsite remedial action is commenced at each facility which is the

subject of such an agreement within twelve months after the agreement is entered into.

"(B) Each interagency agreement under this paragraph shall include, but shall not be limited to—

"(i) a review of alternative remedial actions and selection of construction design by the Administrator;

"(ii) a schedule for the completion of each such remedial action; and

"(iii) arrangements for long term operation and maintenance of the facility.

"(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable from the date the interagency agreement was entered into. Each agency shall include in its annual budget submissions to the Congress a request for funding adequate to complete remedial action, and a review of alternative agency funding which could be used to provide for the costs of remedial action. The request shall also include a statement of the hazard posed by the facility to human health, welfare and the environment and identify the specific consequences of failure to begin and complete remedial action.

"(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to—

"(A) a report on the progress in reaching interagency agreements under this section;

"(B) the specific cost estimates and budgetary proposals involved in each interagency agreement;

"(C) a brief summary of the public comments regarding each proposed interagency agreement; and

"(D) a description of the instances in which no agreement was reached.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached.

"(d) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may

be transferred, by Executive order of the President or otherwise, to any other office or employee of the United States or to any other person.

"(e) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priority List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned and operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities, except for any requirements relating to bonding, insurance, or financial responsibility. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.".

CITIZEN SUITS

SEC. 138. Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new section:

"CITIZEN SUITS

"SEC. 118. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on such person's behalf—

"(1) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment to the Constitution, who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

"(2) against the President for failure to perform any act or duty under this Act which is not discretionary with the President.

Any action under this subsection shall be brought in the district court for the district in which the alleged violation occurred. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such requirement, to order the President to perform such act or duty, as the case may be, or to order such person in violation, of any standard, regulation, condition, requirement, or order to take such action as may be necessary to correct the violation or to apply appropriate civil penalties under this Act: Provided, however, That no district court shall have jurisdiction under this section to review any chal-

lenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a).

"(b) No action may be commenced under subsection (a) of this section (1) prior to ninety days after the plaintiff has given notice of the violation or disposal (A) to the President; or (B) to the State in which the alleged violation or disposal occurs; and (C) to any alleged violator of a standard, regulation, condition, requirement, or order; or (2) if the President or State has commenced and is diligently prosecuting an action under this Act or the Solid Waste Disposal Act to require compliance with such standard, regulation, condition, requirement, or order.

"(c) In any action commenced by the President or a State, under this Act or under the Solid Waste Disposal Act, in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and such applicant is so situated that the disposition of the action may, as a practical matter, impair or impede such applicant's ability to protect that interest, unless the President or the State shows that the applicant's interest is adequately represented by existing parties.

"(d) In any action under this section, the United States or the State may intervene as a matter of right.

"(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(f) Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief (including relief against the President or a State agency).".

ADMINISTRATIVE CONFERENCE RECOMMENDATION

SEC. 139. The Congress finds that recommendation 84–4 of the Administrative Conference of the United States (adopted June 29, 1984) is generally consistent with the goals and purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and that the Administrator should consider such recommendation and implement it to the extent that the Administrator determines that such implementation will expedite the cleanup of hazardous substances which have been released into the environment.

[*AUTHORIZATION OF APPROPRIATIONS*

[*SEC. 140. (a) Section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "as provided in this section" in subsection (a); striking paragraphs (2) and (3) of subsection (b); and by striking subsection (c).*

[*(b) Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:*

[*"AUTHORIZATION OF APPROPRIATIONS*

[*"SEC. 303. (a) The authority to collect taxes under chapter 38 of the Internal Revenue Code of 1954, together with the sums authorized to be appropriated under subsection (b), shall total $7,500,000,000 during the five-fiscal-year period beginning October 1, 1985.*

[*"(b) There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund for fiscal year—*

[*"(A) 1981, $44,000,000,*

[*"(B) 1982, $44,000,000,*

[*"(C) 1983, $44,000,000,*

[*"(D) 1984, $44,000,000,*

[*"(E) 1985, $44,000,000,*

[*"(F) 1986, $206,000,000,*

[*"(G) 1987, $206,000,000,*

[*"(H) 1988, $206,000,000,*

[*"(I) 1989, $206,000,000, and*

[*"(J) 1990, $206,000,000,*

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A) through (I) as has not been appropriated before the beginning of the fiscal year involved.".

[*"(b) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—*

[*"(1) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and*

[*"(2) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.*

[*"(c) EXPENDITURES FROM RESPONSE TRUST FUND.—*

[*"(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof of this Act) as in effect on the date of the enactment of the Superfund Improvement Act of 1985, including—*

[*"(A) response costs,*

[“(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

[“(C) claims for injury to, or destruction or loss of, natural resources, and

[“(D) related costs described in section 111(c) of this Act.

[“(2) LIMITATIONS ON EXPENDITURES.—At least 85 per centum of the amounts appropriated to the Response Trust Fund shall be reserved—

[“(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[“(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).”.]

[TITLE II

[TAX EXEMPTION FOR ANIMAL FEED SUBSTANCES

[SEC. 201. (a) EXEMPTION FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (b) of section 4662 of the Internal Revenue Code of 1954 (relating to definitions and special rules with respect to the tax on certain chemicals) is amended by adding at the end thereof the following paragraph:

[*“(5) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—*

[*“(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, phosphoric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).*

[*“(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term ‘qualified animal feed substance’ means any substance—*

[*“(i) used in a qualified animal feed use by the manufacturer, producer or importer,*

[*“(ii) sold for use by any purchaser in a qualified animal feed use, or*

[*“(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.*

[*“(C) QUALIFIED ANIMAL FEED USE.—The term ‘qualified animal feed use’ means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.*

[“(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.”.

[(b) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

[“(3) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

[“(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, phosphoric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(5), and

[“(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without *interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.".*

[*(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) of this section shall take effect upon the date of enactment of this Act.*]

AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Superfund Revenue Act of 1985".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 202. 5-YEAR EXTENSION OF TAX ON PETROLEUM AND CERTAIN CHEMICALS; CERTAIN EXEMPTIONS.

(a) 5-YEAR EXTENSION; TERMINATION IF FUNDS UNSPENT OR $7,500,000,000 COLLECTED.—

(1) IN GENERAL.—Subsection (d) of section 4611 (relating to termination) is amended to read as follows:

"(d) TERMINATION.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the tax imposed by this subsection shall not apply after September 30, 1990.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND IS MORE THAN $1,500,000,000.—If, on September 30, 1988, or September 30, 1989—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $1,500,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $1,500,000,000 on September 30, 1989, or September 30, 1990, respectively, if no tax is imposed under section 4001, 4611, or 4661 during calendar year 1989 or 1990, respectively,

then no tax shall be imposed under this section during calendar year 1989 or 1990, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $7,500,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of—

"(i) the amount of taxes which will be collected under sections 4001, 4611, and 4661 and credited to the Hazardous Substance Superfund, and

"(ii) the amount of interest which will be credited to such Fund under section 9602(b)(3),

during the period beginning October 1, 1985, and ending September 30, 1990.

"(B) TERMINATION IF $7,500,000,000 CREDITED BEFORE SEPTEMBER 30, 1990.—If the Secretary estimates under subparagraph (A) that more than $7,500,000,000 will be credited to the Fund before September 30, 1990, no tax shall be imposed under this section after the date on which the Secretary estimates $7,500,000,000 will be so credited to the Fund.

"(4) PROCEDURES FOR TERMINATION.—The Secretary shall by regulation provide procedures for the termination under paragraph (2) or (3) of the tax under this section and section 4661.".

(2) CONFORMING AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (relating to expiration of revenue provisions) is repealed.

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) IN GENERAL.—Section 4662 (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) a tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that such person—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.".

(2) REFUND OR CREDIT.—Paragraph (1) of section 4662(d) (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" in subparagraph (B) and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" in the last sentence and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (e) of this section)".

(c) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—

(1) IN GENERAL.—Section 4662(b) (relating to exceptions and other special rules) is amended by adding at the end thereof the following new paragraph:

"(7) RECYCLED CHROMIUM, COBALT, AND NICKEL.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXCEPTION FOR IMPORTS.—This paragraph shall not apply to the sale of any chromium, cobalt, or nickel which is diverted or recovered outside the United States and then imported into the United States.

"(C) CERTAIN PERSONS NOT ELIGIBLE.—

"(i) IN GENERAL.—This paragraph shall not apply to any taxpayer during any period during which the taxpayer is a potentially responsible party for a site which is listed on the National Priorities List published by the Environmental Protection Agency under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, except that such period shall not begin until the Administrator of the Environmental Protection Agency notifies the taxpayer that the taxpayer is such a party.

"(ii) EXCEPTION WHERE TAXPAYER IS IN COMPLIANCE.—Clause (i) shall not apply to any portion of the period during which the taxpayer is in compliance with each order, decree, or judgment issued against the taxpayer with respect to the site in any action or proceeding under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, or both.

"(D) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.".

(2) CREDIT OR REFUND.—Paragraph (1) of section 4662(d), as amended by subsection (b)(2), is amended by inserting "(b)(7) or" before "(e)" in the last sentence thereof.

(d) TAX EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 (relating to definitions and special rules with respect to the tax on certain chemicals), as amended by subsection (c)(1), is amended by adding at the end thereof the following paragraph:

"(8) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.".

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(3) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(5), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 203. IMPOSITION OF SUPERFUND EXCISE TAX.

(a) IN GENERAL.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting before chapter 31 the following new chapter:

"CHAPTER 30—SUPERFUND EXCISE TAX

"Subchapter A. Imposition of tax.
"Subchapter B. Taxable transaction.
"Subchapter C. Taxable amount; exempt transactions; credit against tax.
"Subchapter D. Administration.
"Subchapter E. Definitions; special rules.

"SUBCHAPTER A—IMPOSITION OF TAX

"Sec. 4001. Imposition of tax.
"Sec. 4002. Termination.

"SEC. 4001. IMPOSITION OF TAX.

"(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

"(b) **AMOUNT OF TAX.**—Except as otherwise provided in this chapter, the amount of the tax shall be .08 percent of the taxable amount.

"SEC. 4002. TERMINATION.

"(a) **IN GENERAL.**—No tax shall be imposed under this section after December 31, 1990.

"(b) **NO TAX IF FUNDS UNSPENT OR $7,500,000,000 COLLECTED.**—No tax shall be imposed under subsection (a) during any period during which no tax is imposed under section 4611(a) by reason of paragraph (2) or (3) of section 4611(d), except that section 4611(d)(3) shall, for purposes of this subsection, be applied by substituting 'December 31, 1990' for 'September 30, 1990' each place it appears.

"(c) **PROCEDURES FOR TERMINATION.**—

"(1) **PRORATION OVER TAXABLE PERIOD.**—In the case of any taxable period which begins before and ends after the date of any termination under this section, the tax imposed by section 4001 (and the credit allowable under section 4013) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined without regard to the termination) as—

"(A) the number of days in such taxable period up to and including the date of termination, bears to

"(B) the number of days in such taxable period.

"(2) OTHER PROCEDURES.—The Secretary shall by regulation provide such procedures for a termination under this section as the Secretary determines necessary.

"SUBCHAPTER B—TAXABLE TRANSACTION

"Sec. 4003. Taxable transaction.
"Sec. 4004. Taxable person.

"SEC. 4003. TAXABLE TRANSACTION.

"(a) IN GENERAL.—For purposes of this chapter, the term 'taxable transaction' means—

"(1) the sale or leasing of tangible personal property in the United States by a taxable person in connection with a trade or business, or

"(2) the importing of tangible personal property into the customs territory of the United States by a taxable person.

"(b) EXEMPT TRANSACTIONS.—For exempt transactions, see section 4012.

"SEC. 4004. TAXABLE PERSON.

"Except as otherwise provided in this chapter, for purposes of this chapter, the term 'taxable person' means—

"(1) in the case of a taxable transaction described in paragraph (1) of section 4003(a), the manufacturer of the tangible personal property, and

"(2) in the case of a taxable transaction described in paragraph (2) of section 4003(a), the importer of the tangible personal property.

"SUBCHAPTER C—TAXABLE AMOUNT; EXEMPT TRANSACTIONS; CREDIT AGAINST TAX

"Sec. 4011. Taxable amount.
"Sec. 4012. Exempt transactions.
"Sec. 4013. Credit against tax on sales and leases.

"SEC. 4011. TAXABLE AMOUNT.

"(a) SALE.—For purposes of this chapter, the taxable amount for any sale shall be the price (in money or fair market value of other consideration) charged the purchaser of the property by the seller thereof—

"(1) including items payable to the seller with respect to such transaction, but

"(2) excluding the tax imposed by section 4001 with respect to such transaction.

"(b) IMPORTS.—For purposes of this chapter, the taxable amount in the case of any import shall be—

"(1) the customs value plus customs duties and any other duties which may be imposed, or

"(2) if there is no such customs value, the fair market value (determined as if the importer had sold the property).

"(c) LEASES.—For purposes of this chapter, the taxable amount in the case of any lease shall be the gross payments under the lease.

"(d) CONTAINERS, PACKING AND TRANSPORTATION CHARGES; CONSTRUCTIVE SALES PRICE.—Under regulations, rules similar to the rules of subsections (a) and (b) of section 4216 (relating to containers, packing and transportation charges, etc., and constructive sales price) shall apply in computing the taxable amount.

"(e) SPECIAL RULE WHERE SALE OR LEASE PAYMENTS RECEIVED IN MORE THAN 1 TAXABLE PERIOD.—

"(1) SALES.—In the case of a sale where the consideration is received by the seller in more than 1 taxable period, the taxable amount for each such taxable period shall include that portion of the taxable amount which is includible in the gross income of the taxable person for purposes of chapter 1 for taxable years ending with or within such taxable period (or would be so includible if it were not excludable from gross income).

"(2) LEASES.—In the case of a lease with a term which includes more than 1 taxable period, the taxable amount for each such taxable period shall include the gross lease payments received by the taxable person during such taxable period.

"SEC. 4012. EXEMPT TRANSACTIONS.

"(a) IMPORTS OF $10,000 OR LESS.—No tax shall be imposed under section 4001 on any tangible personal property imported into the customs territory of the United States as part of a shipment (within the meaning of section 498(1) of the Tariff Act of 1930; 19 U.S.C. 1498(1)) the aggregate taxable amount of which is $10,000 or less.

"(b) EXPORTS.—Under regulations, no tax shall be imposed under section 4001 on the sale of any property which is to be exported outside the United States.

"(c) GOVERNMENTAL ENTITIES AND EXEMPT ORGANIZATIONS EXEMPT FROM TAX ON SALES AND LEASES.—

"(1) GOVERNMENTAL ENTITIES.—No tax shall be imposed under section 4001 on the sale or leasing of any tangible personal property by the United States, any State or political subdivision, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of any of the foregoing.

"(2) EXEMPT ORGANIZATIONS.—No tax shall be imposed under section 4001 on the sale or leasing of any tangible personal property by any organization which is exempt from tax under chapter 1, unless the taxable transaction is part of an unrelated trade or business (within the meaning of section 513).

"SEC. 4013. CREDIT AGAINST TAX ON SALES AND LEASES.

"(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by section 4001 for any taxable period on taxable transactions described in paragraph (1) of section 4003(a) an amount equal to the greater of—

"(1) .08 percent of the qualified inventory costs of the taxable person for the taxable period, or

"(2) the amount of the tax imposed by section 4001 on such taxable transactions, to the extent such amount does not exceed $4,000.

"(b) LIMITATION BASED ON TAX LIABILITY; CARRYFORWARD OF EXCESS CREDIT.—

"(1) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) for any taxable period shall not exceed the liability for tax imposed by section 4001 for such period.

"(2) CARRYFORWARD OF EXCESS CREDIT.—If the credit allowable under subsection (a) for any taxable period exceeds the limitation imposed by paragraph (1), such credit shall be carried to the succeeding taxable period and added to the credit allowable under subsection (a) for such succeeding taxable period.

"(c) QUALIFIED INVENTORY COSTS.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'qualified inventory costs' means the costs of tangible personal property included in the inventory of tangible personal property manufactured by the taxable person.

"(2) COMPUTATION OF COSTS.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in this paragraph, qualified inventory costs shall be computed in the same manner as costs are computed for purposes of determining the inventory of a manufacturer under section 471.

"(B) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION.—Qualified inventory costs for any taxable period shall not include the amount of any allowance for depreciation or amortization but shall include any amount paid or incurred during such taxable period for tangible personal property acquired or leased incident to, and necessary for, production or manufacturing operations or processes.

"(C) SPECIAL RULE FOR LONG-TERM CONTRACTS, ETC.—If, under a taxable person's method of accounting for purposes of chapter 1, qualified inventory costs (other than costs to which subparagraph (B) applies) are computed in a manner other than the manner described in subparagraph (A), such costs shall be computed under such taxable person's method of accounting unless the Secretary by regulation provides otherwise.

"(d) SPECIAL RULE FOR TAXPAYERS UNDER COMMON CONTROL.—

"(1) IN GENERAL.—All persons which are—

"(A) members of the same controlled group of corporations (within the meaning of section 52(a)), or

"(B) under common control (within the meaning of section 52(b)),

shall be treated as 1 person for purposes of applying the $4,000 amount under subsection (a)(2).

"(2) ALLOCATION OF $4,000.—The $4,000 amount under subsection (a)(2) shall be allo-

cated among persons described in paragraph (1) in such manner as the Secretary may prescribe by regulations.

"SUBCHAPTER D—ADMINISTRATION

"Sec. 4021. Liability for tax.
"Sec. 4022. Return requirement; taxable period; depositary requirements.
"Sec. 4023. Regulations.

"SEC. 4021. LIABILITY FOR TAX.

"The taxable person shall be liable for the tax imposed by section 4001.

"SEC. 4022. RETURN REQUIREMENT; TAXABLE PERIOD; DEPOSITARY REQUIREMENTS.

"(a) RETURN REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4001 for any taxable period not later than—

"(A) the due date (including extensions) for filing the taxpayer's return of tax under chapter 1, or

"(B) if there is no return of tax under chapter 1, the due date (including extensions) under chapter 1 for a taxable year which is the calendar year.

"(2) EXCEPTION FOR SALES OR LEASES OF $5,000,000 OR LESS.—A taxable person shall

not be required to file a return for any taxable period for taxable transactions described in paragraph (1) of section 4003(a) if the aggregate taxable amount for such transactions is $5,000,000 or less (determined on an annual basis).

"(3) OTHER EXCEPTIONS.—The Secretary may by regulation exempt any taxable person from the requirement of paragraph (1).

"(b) TAXABLE PERIOD.—For purposes of this chapter, the term 'taxable period' means—

"(1) the taxable person's taxable year for purposes of chapter 1, or

"(2) if there is no taxable year for purposes of chapter 1, the calendar year.

"(c) DEPOSITARY REQUIREMENTS.—

"(1) IN GENERAL.—In the case of any person with respect to whom a tax is imposed under section 4001 for any taxable period on any taxable transaction described in paragraph (1) of section 4003(a), such person shall make quarterly deposits of the estimated amount of such tax for the succeeding taxable period.

"(2) SPECIAL RULE FOR 1ST TAXABLE PERIOD.—Notwithstanding paragraph (1), a deposit shall be required for the first taxable period of any taxable person to which this chapter applies if the gross receipts of such person during the first taxable year ending before such taxable period from the sale or leasing of tangible personal property manufactured by such person exceed $50,000,000.

"SEC. 4023. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this chapter.

"SUBCHAPTER E—DEFINITIONS; SPECIAL RULES

"Sec. 4031. Definitions; special rules.

"SEC. 4031. DEFINITIONS; SPECIAL RULES.

"(a) MANUFACTURING.—For purposes of this chapter—

"(1) PRODUCTION INCLUDED.—The term 'manufacturing' includes the production of tangible personal property, including raw materials.

"(2) CERTAIN ACTIVITIES NOT INCLUDED IN MANUFACTURING.—The term 'manufacturing' does not include—

"(A) the furnishing of services incidental to storage or transportation of property,

"(B) the preparation of food in a restaurant or other retail food establishment, or

"(C) the incidental preparation of property by a retailer or wholesaler (including routine assemblage).

"(b) MANUFACTURER.—The term 'manufacturer' includes any producer of tangible personal property (including raw materials), but does not include any person conducting an activity described in subsection (a)(2).

"(c) PERSON.—For purposes of this chapter, the term 'person' includes any governmental entity.

"(d) UNITED STATES.—For purposes of this chapter, the term 'United States', when used in a geographical sense, includes a Commonwealth and any possession of the United States.

"(e) TANGIBLE PERSONAL PROPERTY.—For purposes of this chapter, the term 'tangible personal property' does not include unprocessed agricultural products or unprocessed food products.

"(f) UNPROCESSED AGRICULTURAL PRODUCTS.—The term 'unprocessed agricultural product' includes timber and fish.

"(g) CUSTOMS TERRITORY OF THE UNITED STATES.—The term 'customs territory of the United States' has the meaning given such term by headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States (19 U.S.C. 1202).

"(h) TAX ON IMPORT IN ADDITION TO DUTY.—The tax imposed by section 4001 on the importing of any tangible personal property shall be in addition to any duty imposed on such importation.

"(i) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 and any similar provision of law which requires an internal revenue tax collected by the United States to be paid to a Commonwealth or possession of the United States shall not apply to any tax imposed by section 4001.".

(b) APPLICATION OF CERTAIN PENALTIES.—

(1) FAILURE TO FILE RETURN OR PAY TAX.—Paragraph (1) of section 6651(a) (relating to addition to tax) is amended by insert-

ing "section 4022 (relating to Superfund excise tax)," before "subchapter A of chapter 51".

(2) NEGLIGENCE PENALTY.—Section 6653(a) (relating to negligence or intentional disregard of rules and regulations) is amended—

(A) by inserting ", by chapter 30 (relating to Superfund excise tax)," after "subtitle B" in paragraph (1) thereof, and

(B) by striking out "Windfall Profit" in the heading thereof and inserting in lieu thereof "Certain Excise".

(3) FAILURE TO MAKE DEPOSITS.—Section 6656 (relating to failure to make deposit of taxes or overstatement of deposits) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULE FOR SUPERFUND EXCISE TAX.—For purposes of subsection (a), in the case of the tax imposed by section 4001, the tax required to be deposited shall be equal to the lesser of—

"(1) 90 percent of the tax imposed by section 4001 during the taxable period on taxable transactions described in paragraph (1) of section 4003(a), or

"(2) the amount of such tax imposed during the preceding taxable period (determined on an annual basis).

Paragraph (2) shall not apply if no tax was imposed during the preceding taxable period.".

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting before the item relating to chapter 31 the following new item:

"Chapter 30. Superfund excise tax.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to taxable amounts received in taxable periods beginning after December 31, 1985.

(2) SPECIAL RULE FOR IMPORTS.—In the case of imports, the amendments made by this section shall apply to articles entered, or withdrawn from warehouse, for consumption after December 31, 1985.

(3) SPECIAL RULE FOR TAXABLE PERIOD INCLUDING JANUARY 1, 1985.—In the case of any taxable period which begins before Janu-

ary 1, 1985, and ends after January 1, 1985, the tax imposed by section 4001 of the Internal Revenue Code of 1954 (and the credit allowable under section 4013 of such Code) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined as if such tax and credit had been in effect for the entire taxable period) as—

(A) the number of days in such taxable period after December 31, 1985, bears to

(B) the number of days in such taxable period.

SEC. 204. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 (relating to establishment of trust funds) is amended by adding at the end thereof the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section, or

"(2) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—

"(1) IN GENERAL.—There are hereby appropriated to the Superfund amounts equivalent to—

"(A) the taxes received in the Treasury under section 4001 (relating to Superfund excise tax),

"(B) the taxes received in the Treasury under section 4611 or 4661 (relating to taxes on petroleum and certain chemicals),

"(C) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(D) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act, "(E) penalties assessed under title I of CERCLA, and

"(F) punitive damages under section 107(c)(3) of CERCLA.

"(2) TRANSFER OF CERTAIN OTHER FUNDS.—There shall be transferred to the Superfund—

"(A) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year, and

"(B) the unobligated balance in the Post-closure Liability Trust Fund as of October 1, 1985.

"(c) EXPENDITURES FROM THE SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 of CERCLA (other than subsection (j) thereof) as in effect on the date of the enactment of the Superfund Improvement Act of 1985, including—

"(A) response costs,

"(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

"(C) claims for injury to, or destruction or loss of, natural resources, and

"(D) related costs described in section 111(c) of CERCLA (other than paragraph (7) thereof).

"(2) LIMITATIONS ON EXPENDITURES.—At least 85 per centum of the amounts appropriated to the Response Trust Fund shall be reserved—

"(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of CERCLA, and

"(B) for the repayment of advances made under subsection (d), other than advances subject to the limitation of subsection (d)(2)(B).

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATIONS ON ADVANCES TO SUPERFUND.—

"(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount which the Secretary estimates will be equal to the sum of the amounts described in paragraph (1) of subsection (b) which will be transferred to the Superfund during the following 12 months.

"(B) ADVANCES FOR CERTAIN COSTS.—The maximum aggregate amount advanced to the Superfund which is outstanding at any one time for purposes of paying costs other than costs described in section 111 (a)(1), (2), or (4) of CERCLA shall not exceed 15 percent of the amount of the estimate made under subparagraph (A).

"(C) FINAL REPAYMENT.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before December 31, 1990.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund (or when required by paragraph (2)(C)).

"(B) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Improvement Act of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund is unable (by reason of paragraph (1)) to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.".

(b) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 is amended by adding at the end thereof the following new item:

"Sec. 9505. Hazardous Substance Superfund."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1985.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund es-

tablished by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

SEC. 205. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 206. INDUSTRIAL DEVELOPMENT BONDS FOR HAZARDOUS WASTE TREATMENT FACILITIES.

(a) IN GENERAL.—Paragraph (4) of section 103(b) (relating to certain exempt activities) is amended—

(1) by inserting ", facilities subject to final permit requirements under subtitle C of

title II of the Solid Waste Disposal Act for the treatment of hazardous waste," after "solid waste disposal facilities" in subparagraph (E), and

(2) by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the terms 'treatment' and 'hazardous waste' have the meanings given to such terms by section 1004 of the Solid Waste Disposal Act.".

SEC. 207. REPORT ON METHODS OF FUNDING SUPERFUND.

Not later than January 1, 1988, the Comptroller General of the United States or his delegate shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to various methods of funding the Hazardous Substances Superfund, including a study of the effect of taxes on the generation and disposal of hazardous wastes.

[From the Congressional Record, Sept. 16, 1985, p. S11549]

ORDER OF PROCEDURE ON TUESDAY

Mr. SIMPSON. Mr. President, having conferred previously with the Democratic leader, I ask unanimous consent that, at the hour of 10 a.m., on Tuesday, September 17, the Senate begin consideration of S. 51, Superfund, for the purpose of debate only. I further ask unanimous consent that the Senate then stand in recess between the hours of 12 noon and 2 p.m. on Tuesday, September 17, 1985.

Mr. BYRD. Mr. President, reserving the right to object, and I will not object, the control of the time on the amendments specificated would be in accordance with the usual form, I would assume.

Mr. SIMPSON. Mr. President, the control, is the Senator referring to the manager's control of the amendment in the discussion?

Mr. BYRD. The authors of the amendments and the manager, if the manager is opposed.

Mr. SIMPSON. Mr. President, yes.

The PRESIDING OFFICER. Is there further reservation?

Mr. BYRD. I remove my reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY

Mr. SIMPSON. Mr. President, after conferring with the Democratic leader, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 9 a.m., on Tuesday, September 17, 1985.

I further ask unanimous consent that, following the two leaders under the standing order, there be special orders in favor of the following Senators for not to exceed 15 minutes each: Senator PROXMIRE and Senator HART.

Following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 10 a.m., with statements limited therein to 5 minutes each.

By unanimous consent, at 10 a.m., the Senate will begin 2 hours of debate on S. 51, Superfund. The Senate will stand in recess between the hours of 12 noon and 2 p.m. on Tuesday for the weekly party caucus and luncheon.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, it is understood that the last two sentences are not a part of the request.

Mr. SIMPSON. I have not propounded those, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. For purposes of information, under the previous unanimous-consent order, we will go into the debate with the five rollcall votes in relation to S. 1200, the immigration bill, to occur in the sequence ordered. Additional rollcall votes can be expected throughout Tuesday's session.

I wish to thank very much the Democratic leader for his help and assistance in reaching this accommodation. A little bit of acceleration is deeply appreciated by the managers on both sides of the aisle. I thank the Senator very much.

Mr. BYRD. Mr. President, the distinguished Senator is welcome. I am happy to be able to cooperate.

[From the Congressional Record, Sept. 17, 1985, pp. S11563-S11564, S11577-S11590, S11617-11623]

SUPERFUND IMPROVEMENT ACT OF 1985

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now proceed to the consideration of S. 51 for purposes of debate only.

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment to strike out all after the enacting clause, and insert the following, and from the Committee on Finance, with amendments, as follows:

* * * * * * *

[NOTE.-The bill, as reported, is previously reproduced and may be found at p. 831.]

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Mr. STAFFORD. Mr. President, the bill now before the Senate has been considered by three committees: The Committee on Environment and Public Works, which I am privileged to chair; the Committee on Finance; and, the Committee on Judiciary. I am pleased to say that S. 51 was discharged from one of those committees and reported favorably from each of the other two with only one dissenting vote.

This bill enjoys broad support among both Members of the Senate and outside groups with an interest in the Superfund Program. One reason this bill enjoys such support is because it is a moderate proposal which makes only modest changes in a vitally necessary law.

The reason we are proposing only modest changes is because Superfund is a fundamentally sound law which now is working well. What it needs most is more money and more time. Those are the two essential elements of S. 51.

PURPOSE AND SUMMARY

S. 51, as amended, amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide $7.5 billion in additional funding over a 5-year period.

The overriding purpose of S. 51 is to expand and accelerate the Federal Government's program to clean up and otherwise protect the public health and environment from releases of hazardous substances and wastes. To this end, S. 51 not only provides additional money and time, but makes changes in the law which improve the pace and direction of those cleanup efforts.

I hope additional improvements can be made on the floor through a series of amendments I intend to offer. Title I of the bill establishes cleanup standards to be applied so that human health and the environment is protected in every circumstance; a health program to assure that at each Superfund site a thorough review and assessment is made of the threats posed to human health; a chemicals testing program to develop adequate information on frequently encountered hazardous substances; and a grant program to assist States that wish to establish demonstration systems of assistance for victims of hazardous substances and wastes.

BACKGROUND AND NEED

The modern chemicals technology which has contributed so greatly to this Nation's standard of living has also left a legacy of hazardous substances and wastes which pose a serious threat to human health and the environment. By some estimates, there are over 20,000 abandoned hazardous waste sites in the United States. In large areas, drinking water supplies are contaminated by synthetic organic chemicals, including a large number of supplies which rely upon groundwater, a resource generally thought to be safe from contamination. Unfortunately, the Environmental Protection

Agency estimates that for ground water systems serving less than 10,000 persons, 1 of every 6 supplies is contaminated by volatile organic chemicals and nearly 1 of every 3 of the larger systems.

It was to deal with such problems that the Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which quickly came to be known as the "Superfund." The law authorized a 5-year, $1.6-billion program to clean up releases of hazardous substances, pollutants and contaminants. It also created a new health agency, the Agency for Toxic Substances and Disease Registry, located within the Department of Health and Human Services. The bulk of the cleanup program, however, was delegated to the Environmental Protection Agency.

During the 5 years which have passed since enactment of the Superfund law, public concern has intensified. In some areas and States, public opinion polls show that the public is more concerned over the problem of hazardous substances and wastes than any other domestic issue.

The Environmental Protection Agency has now embarked on a program to clean up 115 Superfund sites per year and estimates that it will be called upon to react to up to 200 emergencies annually. The Assistant Administrator has testified that a 5-year extension of this program would require an additional $5.3 billion. But this estimate fails to take into account other important and substantial demands on the fund. It does not, for example, allow leeway for the payment of any claims for natural resource damages, one of the law's most important, but still unimplemented, components. The estimate also does not allow any room for increase in the cost of cleanup per site beyond the current estimate, even though the Agency's previous projections have climbed in the past 4 years from $2.5 million per site to $6.5 million in 1984 and, most recently, $8.3 million. Finally, the estimate assumes that between now and 1990, which is the expiration date of the 5-year extension, there will be no inflation. Based on this, it seems clear that even a simple extension of the current program will require substantially more than $5.2 billion. With the addition of new responsibilities in this bill (estimated by the Agency to cost $1 to $1.5 billion over 5 years), the committee concluded that an appropriate 5-year funding level was $7.5 billion, as contained in the reported bill.

STATEMENT OF PRINCIPLES

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 was designed to help address many of the problems faced by our country as a result of toxic chemical contamination. The statute does not and is not intended to replace other laws which provide the regulatory foundations to address a variety of these toxic chemical concerns or provide victims with the rights to recover for damages, or obtain other relief. The existing statute and this reauthorization are structured to complement these laws and add to the remedies available to injured parties and other citizens.

The Superfund is founded on certain fundamental objectives. These are:

First, it is to provide ample Federal, State and citizen authority for cleaning up and preventing releases of hazardous substances, pollutants and contaminants.

Second, it is to assure that those responsible for any damage, contamination, environmental harm or injury from hazardous substances bear the costs of their actions and do not transfer them to others, whether through contract, sale, transportation, disposal, or otherwise;

Third, it provides a fund to finance response actions where a responsible party does not clean up, cannot be found or cannot pay. This fund has been based primarily on contributions from those who have been generally associated with such problems in the past and who today profit from products and services associated with such substances; and

Fourth, to provide adequate compensation to those who have suffered economic, health, natural resource, and other damages.

If these objectives can be and are realized through administration of the law, both by the executive branch and the judicial branch, the major objective of the statute will be accomplished: To provide an incentive to those who manage hazardous substances or are responsible for contaminating sites to avoid releases and to make maximum effort to clean up or to mitigate the effects of any such release.

Both the President and the courts should constantly bear in mind that this is a law directed at all toxic threats, whether air, water, or waste, and without regard to the specific use if any, to which the chemical or organism was to be used; pesticides are covered as well as PCB's, mining wastes as well as spent solvents, and organisms as well as chemicals. Individuals and society are to be protected from all of these and made whole when protection has failed.

FUNDING LEVEL

A great deal of the debate over Superfund's eventual cost has centered on the number of sites that will, upon inspection, exceed the EPA threshold score and, as a result, be listed on the National Priorities List. As of April 10, 1985, a total of 540 sites had been listed and an additional 276 had been proposed for listing. The EPA estimates that a total of 1,800 sites will eventually be listed on the NPL, but concedes in its recent report to Congress (the "301" studies) that "if EPA were to undertake a targeted, systematic discovery and investigation effort * * * the size of the program could increase substantially." After identifying several categories of sites that have not been targeted (such as municipal landfills, mining waste sites, and leaking underground storage tanks), the report concludes that "if even a small fraction of these sites requires Superfund response, then funding needed to address them would overwhelm the central estimates currently projected for the Superfund program."

The administration requested, but the Committee on Environment and Public Works rejected, a request that the law be extended for 5 years at a cost of only $5.3 billion. Several related factors were cited by the administration in support of a relatively slower pace of spending. First, it asserted that if the program were expanded too quickly, money would be wasted because of inability to manage the quality of the work performed. Second, according to EPA Administrator Lee Thomas, "the inability of the analytical laboratory industry to further increase its capacity for organic sample analysis and high hazard sample analysis constitutes another major limitation on more expansion * * *." Third, according to EPA's "301" studies, "there is concern about the extent to which fully permitted treatment, storage and disposal facilities will be available to dispose of Superfund waste * * *." Fourth, the Administrator said it has encountered a shortage of experienced personnel with specialized skills. Finally, the Administrator asserted that the capacity of the States to provide funds for their share of Superfund activities would constrain.

The committee examined these assertions and concluded that while they did not justify restraining Superfund to a $5.3 billion level, they did warrant a more cautious increase. Thus, the Committee on Environment and Public Works reported S. 51, as did the Committee on Finance, with a 5-year level of $7.5 billion.

Mr. President, before commenting on some of the specific provisions of S. 51 as reported, I would like to make an observation regarding the law's liability standard.

Superfund imposes a standard of strict, joint, and several liability for those who manufacture, transport, dispose of, apply or in any other way engage in activity which results in the release of hazardous substances. Such individuals are engaged in abnormally dangerous activities and should be held to the standard of care which assures that they exercise the highest degree of care which is possible.

During the reauthorization of Superfund, many individuals and organizations sought to be excepted from this standard of liability. Each of them made a good case. Cleanup contractors believe they should be held to a lesser standard because they are engaged in a societally beneficial activity. Methane operators say the same, as do those individuals who neutralize or otherwise treat hazardous waste.

But the truth of the matter is that we all believe that we are engaged in societally beneficial behavior. Those who manufactured electronic components which were cleansed with solvents that contaminated groundwater and still later caused the deaths of children from juvenile leukemia believed they were engaged in societally beneficial behavior, I am sure. So did chemical manufacturers who produced and sold the pesticide which now contaminates the ground waters of Long Island and Wisconsin, I expect. Similarly, the companies which owned and operated the smelters whose emissions poisoned the nervous systems of nearby children probably thought that they were contributing to the national security of the United States. And in each case they may be correct.

The issue is not whether the activity is societally beneficial. The issue is whether it is abnormally dangerous. What the Congress declared in enacting the Comprehensive Environmental Response, Compensation and Liability Act of 1980 was that conduct which results in the release of hazardous substances into the environment is an abnormally dangerous activity for which a person should be held strictly, jointly, and severally liable.

In some instances this had led to a result which appears harsh. But the alternative is even harsher. It may be unfair, from a cleanup contractor's perspective, for him to be held to the CERCLA standard of liability and forced to pay for personal injuries. But it is even less fair to say that those costs should be borne by the victims, whose only connection with the enterprise is their injury.

Is it more fair for the child stricken with leukemia to pay for his medical bills or for the person who released the solvents to do so?

Is it more fair for the taxpayers to pay to cleanse a contaminated aquifer or the companies which deposited the waste to do so?

My answer to these questions is simple. The person who caused the damage should bear the cost of cleaning it up, including the cost of making its victims whole.

There is one specific area where this subject has recurred time and time again. That is when an individual is in compliance with a permit. Polluters contend that because they were doing what the law did not prohibit or what the law allowed, they should not be liable.

It is a bitter irony to this Senator that the thousands of enterprises who have sought—sometimes with great success, almost always with limited success—to weaken environmental laws now constantly contend that they should be protected from liability by compliance with the softened regulations. Mining companies who sought and won an exemption from the hazardous waste requirements now seek to be immunized from liability as well. Chemical companies who sought to make the best available technology requirements of the Clean water Act only those which are "economically achievable" now say that this weakened requirement justifies a lesser standard of liability. Companies which won relaxation of statutory and regulatory requirements for manufacturing, transporting, storing, and disposing of poisonous wastes because these would cost too much money now seek immunity from damages which result from these relaxations.

This is understandable. These firms are in the business of making a profit, which is as it should be. But they are also in the business of handling materials which can and do have lethal consequences when released into the environment. The costs of such releases should be borne by them, so they have an incentive to avert and minimize releases and harm.

These were the principles in 1980, and they are embodied in S. 51 as well. The only change has been with respect to State and local governments. Even that change is very narrow and justifiable because of the special duties and obligations which fall on government. Governments acquire title or possession of property involuntarily; banks and other businesses do not. Governments are obliged to respond to toxic chemical emergencies to protect the public health and safety; chemical and other companies are not. Governments could, if they so choose, confer absolute immunity on themselves through the exercise of the sovereign's prerogative; individuals cannot.

For these reasons and others, the reported bill alters the law's liability standards for units of State and local government. But for all others, the standard remains, as it should, unchanged.

Mr. President, I would now like to explain a few technical provisions of S. 51 as reported from the Finance Committee, from my committee, and after review by the Senate Judiciary Committee.

ACCESS AND INFORMATION GATHERING

Section 115 of the bill clarifies and strengthens the President's authority under section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 to gain access at Superfund sites and to obtain information regarding hazardous substances, pollutants, and contaminants associated with those sites. It is of critical importance because the existing statute provides access and information gathering authority, but no explicit means to enforce such authority. Therefore, to enforce the authority the President must rely on other laws, which do not necessarily apply to Superfund substances, or on other provisions of CERCLA which provide implicit enforcement authority. This section of S. 51 will provide the President with clear enforcement mechanisms for CERCLA access and information gathering authorities that are similar to the authorities in other laws, such as the Resource Conservation and Recovery Act.

Access sometimes is necessary for sampling to determine the nature and extent of the contamination or to undertake the response action itself. Many times response actions have been severely hampered because parties refused EPA access to, or adjacent to, the facility. Some examples include Western Processing in Seattle, WA; Stringfellow in Glen Avon, CA; OMC in Waukegan, IL; Pepper Steel, in Medley, FL; and many others. Fund response action at the New Lyme site in Ashtabula County, OH, was also delayed because certain responsible parties refused to provide the Environmental Protection Agency with information regarding the materials sent to the site.

The section contains several important changes to the existing authority, including:

Subsection (1) makes explicit what has been implicit: The authority for the President to gain access or obtain information for the purposes of choosing or undertaking a response action.

Subsection (1)(A) clarifies and expands the kinds of information that the President may obtain and the parties from whom it may be obtained.

Subsection (1)(B) makes explicit the authority for the President to gain access not just to the Superfund site itself, but also adjacent to the site or to any "other place or property" associated with the hazardous substances, or where there is a release or threatened release or where entry is needed to properly determine or undertake a response action.

Subsection (1)(C) explicitly authorizes the President to inspect and obtain samples from the site itself or other places or locations where hazardous substances are suspected or are located. Subsection (1)(B) and this subsection are especially important because at many sites both soil and groundwater contamination extend beyond the actual property boundaries of the site. It is necessary to determine the extent of the contamination before the proper remedy can be chosen.

Subsection (2) is the enforcement authority previously mentioned. Subsection (2)(A) provides EPA with the authority to issue administrative orders directing compliance with a request for access or information. Additionally, it authorizes EPA to ask that the Department of Justice commence a lawsuit to compel compliance. Subsection (2)(B) provides that in such a lawsuit the court, in appropriate circumstances, shall issue an injunction prohibiting interference with the exercise of EPA's authority or directing compliance with an administrative order. It also provides that the court may assess a civil penalty against any person failing to comply with a request or an administrative order.

These important changes will strengthen EPA's ability to obtain consensual compliance with access or information requests and to obtain compliance through administrative or judicial means when consent is not forthcoming. Moreover, when forced to compel compliance, EPA's statutory authority will be clear.

ADMINISTRATIVE ORDERS

Section 104(b) of the Comprehensive Environmental Response, compensation and Liability Act of 1980 currently authorizes the President to conduct a variety of investigations, studies, and information gathering activities. Remedial investigations and feasibility studies [RI/FS], are performed to serve as the basis for choosing the appropriate extent of remedy.

In many circumstances it may be appropriate for potentially responsible parties to conduct the RI/FS. They are more likely to conduct cleanup if they are involved in the decision concerning the appropriate remedy.

This amendment authorizes the President to issue section 104(b) administrative orders on consent to these parties for conduct of RI/FS.

Current law authorizes the President to issue administrative orders under section 106 if there is a finding of "imminent and substantial endangerment".

Because section 104(b) orders would not require findings of imminent and substantial endangerment, their use could speed up the issuance of orders by avoiding delay due to debate over the existence of endangerment. Thus, new 104(b) will increase the likelihood that private parties will agree to conduct the RI/FS.

Also, the Government's oversight can be most effectively conducted when parties conducting the RI/FS are subject to an administrative order.

Finally, private party conduct of the RI/FS and cleanup will free up Government resources to address other sites.

FEDERAL LIEN PROVISIONS

The provisions of S. 51 as reported would impose a Federal lien for Government response costs on real property subject to a Superfund cleanup. A statutory lien would allow the Federal Government to recover the enhanced value of the property and thus prevent the owner of the property from realizing a windfall from fund cleanup and restoration activities. The lien would be perfected as of the date security interest holders learned, or should have learned, of the commencement of a Government response action at a Superfund site.

New section 107(m) does not specify what priority a Superfund lien would have with respect to other liens or security interests. This will allow the courts to decide the relative priority of a Superfund lien.

Mr. President, the bill now before the Senate is the product of 18 months of concerted effort by the Committee on Environment and Public Works, together with 5 years of oversight of the Superfund Program. There has not been any period of time since the date of Superfund's enactment on December 11, 1980, to today that the committee has not devoted attention to the important and new undertaking by the Environmental Protection Agency. After a difficult and at times controversial beginning, the program has gathered momentum and is soundly managed. This bill will help increase that momentum and cure the few flaws which the committee has uncovered since 1980. This bill deserves the full support of every Member, regardless of philosophy or party, and I hope and believe each of you will agree.

Mr. President, I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I am very pleased to rise in support of S. 51, the Superfund Improvement Act of 1985. It is a special pleasure for me to stand in the well today, as the Senate turns to consideration of this bill. Since joining the committee, I have had no higher priority than seeing the Senate strengthen and extend the Superfund Program.

Funding for the Superfund Program will expire in just 14 days. Superfund revenues are virtually depleted and the Environmental Protection Agency has essentially shut down the program. It will obligate no new funds for cleanup at our toxic waste sites until the Congress reauthorizes Superfund. We are at the 11th hour and we must act promptly to minimize disruption to the Superfund Program.

Anticipating this potential situation, the senior Senator from Vermont brought a Superfund extension bill up in the Environment and Public Works Committee in 1984. With his leadership, the committee reported a bill to the full Senate for consideration last year, before we adjourned. Unfortunately, that bill was never scheduled for Senate action.

Mr. President, Senator STAFFORD introduced S. 51 on January 3, 1985, the very first day of the 99th Congress, to try and ensure that the clock would not run out on Superfund. I was proud to join him as an original cosponsor.

The Senate Environment and public Works Committee approved this bill on March 1. But it has taken almost 7 months for S. 51 to make its way through the Senate Finance and Judiciary Committees, and to the Senate floor. This delay in consideration of S. 51, and the failure of the House of Representatives to approve a Superfund authorization bill, makes it certain that we will have to take some temporary action to keep the program alive, until we can finalize a bill and send it to the President for his signature.

However, Mr. President, we would not be here today, considering this bill, if it were not for the diligence, concern, and persistent efforts of my colleague from Vermont, Senator STAFFORD, chairman of the Environment and Public Works Committee.

I want to take this opportunity to express my appreciation to the Senator from Vermont, my esteemed chairman, for his unwavering support for bringing this bill before the Senate. I commend him for his efforts.

In this, Mr. President, Senator STAFFORD was joined by the distinguished ranking minority member of the Environment and Public Works Committee, the Senator from Texas, Senator BENTSEN, who has played a critical role in shaping the bill before us in both the Environment and Public Works and Finance Committees. I would also like to commend the chairman and ranking minority member of the Environmental Pollution Subcommittee, Senators CHAFEE and MITCHELL, and other members of the committee anxious to see Senate action on this bill, for their support of the committee leadership in moving this bill through committee. Many of these members would be here this morning were it not for a very important markup which is taking place in the Finance Committee, on which they also serve.

The strong support S. 51 enjoys in the Senate is evidenced by the fact that 63 of my colleagues joined me in a letter, which I authored earlier this year to Senator DOLE, the majority leader, urging him to schedule the Superfund Improvement Act for full Senate action.

Mr. President, the cleanup of abandoned toxic waste sites is a pressing national need and it is a top priority for New Jersey. In no other State is the Superfund Program more important. Fully 99 of the 850 sites on the National Priority List for Superfund cleanup are in New Jersey. The most dangerous site in the country, the Lipari landfill, is located in the suburbs of Camden. There is not one county in New Jersey free of abandoned toxic waste sites which threaten human health and the surrounding environment.

Not one site in New Jersey has been totally cleaned up. Cleanup work has begun on only 20 of the 99 sites on the Superfund list in New Jersey. New Jersey needs a bigger, faster paced Superfund Program. So do many other States around the country. By way of example, States like New York have a total of final and proposed sites of 59; California has 60; Ohio has 29; Pennsylvania has 59; Texas has 26; Minnesota has 39; and the total of just these few States is more than 280 sites that need prompt and immediate action.

In my State, and around the Nation, the Government is losing its credibility and the public is understandably frustrated and angry. There is just not enough money at current funding levels to make a dent in the problem.

In addition, in the 5 years we have had experience with the Superfund Program, as well as the Defense Department's toxic waste cleanup program, we have identified areas in which they must be strengthened and improved.

It is time to move faster, to rid our environment of the toxics that are poisoning our land and water, and threatening our citizens. That is why extension and improvement of the Superfund Program is so important to New Jersey and the Nation.

Mr. President, S. 51 provides funding over the next 5 years for the Superfund Program of $7.5 billion, more than four times as much as the current Superfund Program. Funding will be derived from two sources. An excise tax is levied on manufacturers that have sales receipts of more than $5 million per year in manufactured goods or raw materials. This broad-based tax would raise approximately $6 billion of the $7.5 billion of the expanded fund. I supported the efforts of Senators BENTSEN, MITCHELL, CHAFEE, BRADLEY, and others, on the Finance Committee, to develop a broader based tax to help pay for an expanded Superfund.

The remaining $1.5 billion would be raised through an extended tax on feedstocks and petroleum. Additional moneys would be added to the fund through cost recovery from parties responsible for cleanup, from interest collected on the fund, and from the postclosure liability fund.

Mr. President, S. 51 clearly addresses an issue that has hindered State efforts to set up their own superfunds. Because of a suit filed in New Jersey, which questioned the right of a State to tax the same sources taxed by the Federal Superfund, State Superfund programs have had a cloud over them. This has certainly been the case in New Jersey, where the State was extremely reluctant to spend funds out of our spillfund without this litigation being settled. S. 51 strikes the so-called preemption language in existing law which created this legal ambiguity. Approval of the bill will end years of litigation and free States to conduct aggressive cleanup programs with their own funds.

Mr. President, beyond increasing the size of the Superfund, S. 51 also makes important improvements to the current program.

S. 51 includes new health provisions that direct and authorize funds for the testing of toxic chemicals most commonly found at Superfund sites. It requires that health assessments be done at every site listed on the National Priority List, and that a more effective program be established for providing information to citizens who are worried about the health ramifications of exposure to nearby Superfund sites.

Mr. President, S. 51 also contains provisions to speed cleanup at Federal facilities. The extent of the contamination at hundreds of Federal facilities is just now coming to light.

The Federal facility amendments in S. 51 would require an expanded oversight role by the EPA. Inclusion of a Federal facility site on the national priority list would trigger schedules for cleanup at the site. These schedules would be implemented through interagency agreements, and accompanied by reports to Congress on the status and budgetary needs for completing cleanup and assuring long term operation and maintenance at sites at which interagency agreements are to be made.

Under S. 51. EPA would be required to concur in the selection of cleanup actions to be taken at Federal facilities. S. 51 also empowers EPA to issue corrective action orders at Federal facilities. Finally, this section of the bill reaffirms the original language of statute: That all provisions applicable to private parties are applicable to Federal facilities.

When the Senate begins its consideration of amendments, I intend to offer an amendment that will expand the Federal facility reporting requirements under this provision.

Mr. President, the bill also contains citizen suit provisions that provide citizens with the right to sue in Federal court to enforce nondiscretionary duties and to enforce standards, regulations, orders, and other requirements under the act. This provision is an important step in improving the tools that citizens have to ensure that the Superfund is implemented fairly and effectively.

Mr. President, I deeply appreciate the willingness of the members of the Environment and Public Works Committee to work in crafting an improved Superfund program, and one which is responsive to New Jersey's needs, as well as other States across the Nation. During the committee's markup of a Superfund extension bill in 1984, I offered a number of amendments, which were adopted at that time, and are carried over into this year's bill.

Key among those amendments are two designed to address ground-water contamination problems, prevalent in New Jersey and elsewhere around the country. Fully 60 percent of New Jersey's drinking water comes from ground water, and in the southern part of the State upward of 90 percent does. Contaminants leaching out of toxic waste sites threaten to contaminate our ground water, a precious resource in our drought plagued State.

My amendments requires EPA to clean up contaminated ground water and surface water as part of remedial action at Superfund sites, and mandate that EPA provide household replacement water, as well as drinking water, when contaminated water supplies or water supply systems are replaced by the agency.

S. 51 also contains several other amendments I sponsored in 1984 which refine Federal-State relationships under Superfund. The first of these provisions allows a State to spend its own money to conduct early cleanup at a Superfund site, with the assurance that it will be reimbursed by the fund for authorized expenditures. This amendment encourages States to use their own funds to move faster than the Federal program might permit, without being penalized for doing so.

The second of these provisions extends the statute of limitations for natural resources damage claims, which expired last December, before EPA issued regulations to inform State applications for reimbursement. The absence of these regulations made it impossible for States to submit acceptable applications for the money to which they are entitled under Superfund. However, this year, in recognition that public health risks must take priority in securing cleanup funds, S 51 was amended to include a limitation on funds for natural resources damage claims.

Mr. President, I also want to express my appreciation to the chairman and other members of the committee for their cooperation in working with me this year on amendments to S. 51 to improve emergency planning and access by the public to information about chemicals in their communities.

These amendments stem from a hearing held by the Senate Environment and Public Works Committee in February in the wake of a spate of chemical releases in New Jersey and the tragedy in Bhopal, India. I requested that this hearing be held in New Jersey to investigate what could be done to minimize the risks associated with chemical releases into the atmosphere. New Jersey poses a great challenge in this regard, because it is the most densely populated State in the Nation and is the third largest producer of chemicals in the United States. In addition to these emergency response issues, data collected by the Library of Congress for the committee indicated that daily exposure to chemicals emitted by chemical facilities was of sufficient magnitude and regularity, that these releases should be reported to the public.

Based on this hearing, the committee adopted two amendments that I sponsored to S. 51 in February.

These provisions would improve the notification and penalties provisions of the existing Superfund program by requiring immediate notification of State and local officials in the event of a release of a "reportable quantity" of a hazardous substance covered by Superfund. S. 51 strengthens the penalties for failure to notify by establishing civil penalties of up to $75,000 per day and increasing criminal penalties to up to 5 years in jail.

The lessons of the past year have underscored the importance of effective reporting requirements, and tough penalties for failure to report releases. Nowhere was this clearer than in West Virginia this summer when a toxic cloud of aldicarb oxime from a Union Carbide facility hung over the plant for 20 minutes before response officials were notified. It was another 20 minutes before the local community was notified, at which time the cloud had moved through the community, sending more than 130 workers and residents to area hospitals.

I intend to offer an amendment with Senators HUMPHREY, HEINZ, and MOYNIHAN to supplement these provisions and the emergency response provisions in Superfund when the Senate takes up amendments to the bill.

The second provision adopted by the committee establishes a hazardous substance inventory, to help assess the extent to which the public is exposed to chemicals which may have long-term, adverse impacts on the public health. The committee will be refining this provision, section 106, during consideration of S. 51. I very much appreciate the chairman's support for these provisions.

Finally, Mr. President, I want to thank the chairman for working with me and Senator MITCHELL on legislation to establish a viable indoor air pollution and radon detection and mitigation program within EPA.

Mr. President, the committee has produced a sound bill which should enjoy the support of the Senate. During consideration of the bill, several amendments may be offered to increase the size of the Superfund Program and improve other aspects of the program. These amendments pose a difficult choice for those of us who serve on the committee, and have worked so closely together to fashion S. 51. However, Mr. President, I intend to support amendments to further strengthen the bill, including amendments to increase the size of the fund.

In closing, Mr. President, I want to express my personal appreciation for the evenhanded and nonpartisan manner in which the Senator from Vermont conducted committee consideration of this bill and, in fact, the equitable and considerate manner in which he conducts all committee business. The Senator from Vermont has always gone out of his way to encourage me to participate in committee consideration of this bill and all committee work. For this I extend my deepest appreciation.

Mr. STAFFORD. Mr. President, will the Senator yield to me very briefly?

Mr. LAUTENBERG. Indeed I will, Mr. President.

Mr. STAFFORD. I simply wish to express my appreciation to the able Senator from New Jersey for his very kind words and my deep appreciation for all of the effort that he has made in helping us conduct committee business in the Environment and Public Works Committee this year. It has been a special pleasure for me personally to work with the Senator from New Jersey and I want him to know that.

Mr. LAUTENBERG. I thank the Chair.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, the Superfund Improvement Act of 1985 is the embodiment of a national commitment to achieve a large and very important national goal.

The Superfund legislation passed in 1980 was this Nation's mechanism to begin the work of cleaning up the hazardous substances releases and toxic waste sites which endanger the lives of American citizens.

From that beginning, we developed the means to consider the scope of the problems ahead, and we began the early stages of correcting them. With the legislation we consider today, this Nation will get down to business. We are resolved to rid ourselves and future generations of dangers that have been ignored for too long—tragedies that are waiting to happen unless we respond firmly to this national priority.

Before I discuss some of the important provisions of this bill, I want to acknowledge a number of our colleagues for the long hours and hard work they have devoted in getting us to this critical point of progress:

First, I recognize our chairman, the distinguished Senator from Vermont [Mr. STAFFORD] and the work he has done there. It has been a pleasure to work with him. There has been a virtual absence of partisanship in that committee. You do not really have a Republican or a Democratic position, you have a bipartisan position as to what we think is best for our country.

I recognize, too, the chairman of the Finance Committee [Mr. PACKWOOD] and the majority leader [Mr. DOLE] and the minority member of the Finance Committee [Mr. LONG] and my friend from New Jersey who has just finished speaking here [Mr. LAUTENBERG].

The bill before us today, S. 51, reauthorizes Superfund for another 5 years for a total of $7.5 billion. This is an increase in the authorized funding, which is justified by the increased cost of cleanup and the fact that the problem of uncontrolled releases of hazardous substances is greater than we envisioned 5 years ago when Superfund was first enacted.

In order to raise this sum of money, the Finance Committee voted to put in place an excise tax on manufactured goods. The Superfund excise tax we are talking about applies to goods either made in this country or imported into the country. Exports are exempt from the tax.

In other words, if this product is going to be shipped overseas, the tax is taken off it. If the product is being shipped into the country, the tax is placed on it.

The Superfund excise tax is both fair and simple. It is fair because hazardous waste dumps are a problem caused by manufacturers of every stripe. Chemical companies may produce chemicals; but other manufacturers use them and dispose of them. For example, there are estimates that, of the top 25 companies identified as parties responsible for the Stringfellow site in California, one of the worst dumps, there is not a chemical company among them—not one.

Even manufacturers that have not directly contributed to hazardous waste sites benefit from hazardous waste. I should like to find one manufacturer that does not use chemicals in any form. The Superfund excise tax seeks to recognize the national nature of the Superfund problem and spread the funding burden to manufacturers across the country.

As I said, the Superfund excise tax is also simple. It has been designed to keep additional paperwork to an absolute minimum. By and large, companies will be able to compute this tax with the same information that they use to figure their income tax. We have also minimized the number of taxpayers by providing a generous exemption for small companies.

Finally, the Superfund excise tax has the significant advantage of what trade experts term "border neutrality." Since imports would be taxed and exports exempted, American companies will not be put at a competitive disadvantage against foreign companies as a result of this tax.

On balance, our choices are harsh and limited. A major role for general revenue is impossible in my opinion. Increases in the feedstock tax are inequitable and unwise. Waste taxes can play a role but not a pivotal role.

I must say when we started out trying to find a way to pay for this, that is where we hit, on a waste tax. We found it had a diminishing return and we found it inadequate in order to raise sufficient money for this purpose. The only real option is the one we have chosen—the development of this broad-based revenue source.

The amendments reported by the Committee on Environment and Public Works clarify the uses for the Superfund so that the funds are properly directed to reduce the hazards of abandoned waste sites. The proper scope of the program, remedial action selection, and other amendments will produce a more focused and effective Superfund Program.

An amendment to section 104 response authorities is of particular interest to me and to the State of Texas. This remedial action alternative language helps resolve a difficult problem for those involved in cleanup of hazardous substances. Under Superfund as originally written, it is unclear how clean a Superfund site must be before remedial action can be considered complete. S. 51 clarifies that, at a minimum, all remedial actions must assure protection of human health and the environment. This is the same performance standard required under the Solid Waste Disposal Act for hazardous waste disposal facilities.

S. 51 also clarifies that the design standards contained in section 3004 of the Solid Waste Disposal Act do not have to be applied to all Superfund sites. The size, topography, geology, hydrology, and mix of wastes at Superfund sites all vary considerably and a uniform remedy may not be the best solution for each of these sites. The most effective use of Superfund is for remedial actions to be relevant and appropriate to the circumstances of a specific site. This amendment to section 104 provides needed flexibility while assuring that human health and the environment will be adequately protected.

S. 51 also addresses the problems faced by remedial action contractors, who are finding it increasingly difficult to buy insurance for their Superfund activities. Without this insurance some of these contractors may choose not to seek Superfund contracts to clean up sites and the pace of cleanup could decline.

S. 51 provides that the EPA may include an indemnification provision in these remedial action contracts so that the EPA would act as an insurer of the contractors' actions. During a hearing held by the Committee on Environment and Public Works on the insurance issue, the contractors expressed their view that this discretionary authority would not be sufficient to keep them interested in Superfund contracts nor would it provide enough assurances to insurance companies so they would continue to issue insurance policies covering Superfund cleanup activities.

In response to these concerns, I introduced an amendment, cosponsored by the chairman of the committee, that would make such indemnification provisions mandatory in remedial action contracts. In this way, the contractors are assured that they will be indemnified for their nonnegligent actions and remedial actions at Superfund sites can continue apace.

S. 51 contains many other important provisions that will greatly enhance our ability to bring this critical national problem under control. Passage of this measure will be one of the most effective acts we could take to protect ourselves, our environment, and future generations from the threat of toxic contamination.

Mr. STAFFORD. Mr. President, before the most able Senator yields the floor will he yield to me for a second?

Mr. BENTSEN. I am delighted to yield at this point to the chairman.

Mr. STAFFORD. Mr. President, I want the RECORD at this point to show how much I have enjoyed working with the very able Senator from Texas over the years. One of the reasons our committee has been a bipartisan or nonpartisan committee and able to work together is the way the Senator from Texas has conducted himself as the ranking member and, before that, as the chairman of the Transportation Subcommittee when I served on it as the ranking member under his leadership. I want him to know how much I have enjoyed the years we have been able to serve together and how much I think the Senator from Texas has contributed over the years to the work of this subcommittee.

Mr. BENTSEN. Mr. President, I am very pleased at those comments. I must say as the years have passed, I have become more convinced of the advantages and values of seniority.

The PRESIDING OFFICER (Mr. RUDMAN). The Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to commend the able Senator from Vermont [Mr. STAFFORD], chairman of the Environment and Public Works Committee, for the work he has done on Superfund. We had some differences on amendments and we were able to work them out with him. I think we improved the bill. He was very cooperative, as he always is on matters of public interest. I commend him for the fine leadership he has shown on this important matter.

Mr. STAFFORD. Will the Senator yield briefly?

Mr. THURMOND. I am happy to yield.

Mr. STAFFORD. Mr. President. I want to express my appreciation for the cooperation the most able Senator from South Carolina [Mr. THURMOND], chairman of the Committee on the Judiciary and President pro tem of the Senate, has extended to us in working out mutually agreeable amendments which, for the Senator from South Carolina, myself, and the members of the committee, I shall be offering at the earliest opportunity as noncontroversial amendments. It has been a joy to work with the Senator.

Mr. THURMOND. I thank the Senator very much.

Mr. BENTSEN. Mr. President, I wish to say to the Senator that if we had that kind of cooperation we get from the Senator from South Carolina in working out our amendments, this democratic process would work much better and faster.

Mr. THURMOND. I thank the Senator. That is the way we ought to work for the good of the general public and that is what we have done here.

Mr. CHAFEE. Mr. President, the bill we are considering today, the Superfund Improvement Act of 1985, addresses one of the most important issues facing us today: How to speed up and improve the Federal program that is dedicated to cleaning up the thousands of sites that are contaminated with hazardous substances and toxic chemicals. Many of these sites present immediate threats to the health and safety of citizens all across the country. Too many of these sites present an equally dangerous, though less obvious, threat to the environment and the ground water that many of us use for drinking water.

Most Superfund sites are a tragic legacy of improper management and disposal of toxic wastes. Last year it became clear that the Resource Conservation and Recovery Act (RCRA), the Federal law governing the handling and disposal of such wastes, needed to be strengthened. Bold action was needed to prevent the creation of a new generation of Superfund sites. As author and floor manager of the 1984 RCRA amendments, it was reassuring to see that this body recognized the need and unanimously approved that legislation. Similarly, earlier this year, we unanimously approved amendments to the Clean Water Act that will, among other things, institute new controls on toxic chemicals that have been finding their way into our precious rivers, lakes, bays, and oceans.

As we take bold steps regarding the future, we must take equally bold steps to address the errors of the past. That is what today's bill, S. 51, is all about.

Many of us recognized in 1980, when we first created Superfund, that the $1.6 billion, 5-year program was woefully inadequate. However, those figures were agreed to as part of a compromise that was necessary to even begin the program. Today, no one disputes the need to continue the program nor the need to greatly expand it. Although we are focusing on a new 5-year bill, it is widely acknowledged that the job of cleaning up these sites and protecting the public health will take much more than 5 additional years. Many of us believe that the ultimate cost will be even greater than the $10 billion or $13.5 billion fund that is being urged by some.

The Committee on Environment and Public Works, in agreeing to a $7.5-billion figure for the next 5 years, considered how to get the maximum cleanup progress. If EPA receives too much money in too short a period of time, I am uncertain that agency personnel could manage all the contracting work efficiently and money meant for cleanup could be squandered. At a $7.5-billion level, we will be expanding the current program almost five-fold and spending an average of $1.5 billion each year for the next 5 years. The Committee on Environment and Public Works and the Committee on Finance rejected the administration figure of $5.3 billion as too low to get the job done.

Expanding the program from $1.6

billion to $7.5 billion is a significant step and should provide for a more aggressive program when compared to the last 5 years. Such an increase will also set the stage for continued growth of the program.

Unlike the situation that existed when Superfund was first created in 1980, in the face of heavy opposition, the program now enjoys broad support. What is controversial is how Congress will raise billions of dollars in additional money needed to clean thousands of sites contaminated with toxic chemicals.

The controversy really boils down to two choices: Impose a broad-based tax that spreads the burden evenly through society, or impose a tax on those who generate hazardous waste.

The Senate is likely to take the broad-based approach; the House of Representatives appears ready to support some form of a "waste-end" tax on toxic material itself.

While a waste-end tax on toxic material is appealing on the surface—after all, why should not those who produce toxic substances foot the bill for cleaning up the mess that comes from its disposal?—further consideration shows such a levy is unworkable and counterproductive, for these reasons:

A waste-end tax creates incentives for unscrupulous producers of toxic material to avoid the levy by illegal dumping. Through RCRA, Congress has imposed severe restrictions on disposal of hazardous waste. Since waste-end taxes would be collected when toxic material is delivered to a RCRA-approved site, some producers would seek to avoid the tax by improper disposal.

Because a waste-end tax would encourage producers of toxic waste to seek ways of avoiding the levy, it is difficult to predict with certainty that the needed revenue could be raised; indeed, such a tax could prove insufficient to meet the needs of Superfund. The likelihood of a revenue shortfall is the most troublesome aspect of pending proposals to use waste-end taxes to finance all or part of the Superfund. If we want a $7.5 or $10 billion fund and plan on $1.5 billion or more of that coming from waste and taxes, we will undoubtedly be disappointed and will end up with a much smaller fund than predicted and needed.

A waste-end tax could well play havoc with regulation by the Environmental Protection Agency of hazardous waste generation and disposal. For valid reasons, all pending waste-end tax proposals would assign duties of collection to the Internal Revenue Service. But having a second Federal agency, the IRS, involved in decisions affecting the disposal of toxic waste would certainly lead to new confusion, making the EPA's job that much more difficult. Similarly, the constant changes in, and challenges to, EPA regulations would make it difficult for the IRS to administer the tax and issue its own regulations.

It is for these reasons that the Senate Finance Committee overwhelmingly rejected a waste-end tax when it recently considered extension and expansion of Superfund. Instead, the committee voted to raise $7.5 billion over the next 5 years by imposing a small excise tax on manufactured goods.

A broad-based tax on industry leaves no incentive for producers of toxic substances to avoid the law or resort to methods of disposal which could further damage the environment. Because such a tax is collected generally, the revenue base is assured. Finally, a broad-based tax would not force the IRS and the EPA to work at cross-purposes.

Existing law was enacted to put a stop to past practices of midnight dumping and unsafe disposal of hazardous waste. As appealing as a waste-end tax is at first blush, it could, in the end, encourage a new round of illegal dumping. As such, Congress should reject it.

The importance of Superfund is twofold. First, it provides a fund to finance direct action by the Government to clean up dangerous sites. Second, and perhaps even ore importantly, it establishes a legal system of liability and enforcement tools to make sure that those who produced the hazardous substances and those who created the threats to our health and environment must pay for cleanup of these sites. Fund-financed cleanups are intended to be a supplement to cleanups by private, responsible parties. Aggressive enforcement of the law will assure adherence to the oft-cited principle that "polluters must pay."

Mr. President, most of the Superfund comes from special taxes that were created specifically for the fund. Unless the Senate, the House, and the President act quickly, the authority to collect those taxes will expire on September 30 of this year and fund-financed cleanups will grind to a halt. Fortunately, the Senate is acting in a timely manner and the liability and enforcement provisions of the law will continue to be in effect.

If, as appears likely, the House of Representatives fails to pass a bill before September 30, and the Congress doesn't send a bill to the President by that date, the EPA and the Department of Justice should use their continuing authority to force cleanups by private responsible parties.

A simple 1-year extension of the law would be a mistake. The existing program needs to be expanded and strengthened. The need is now, not next year.

The overriding purpose of S. 51 is to expand and accelerate the Federal Government's program to clean up and otherwise protect the public health and environment from releases of hazardous substances and wastes. To this end, S. 51 not only provides additional money and time, but makes changes in the law which improve the pace and direction of cleanup efforts. Title I of the bill will establish cleanup standards to be applied so that human health and the environment is protected in every circumstance; a health program to assure that at each Superfund site, a thorough review and assessment is made of the threats posed to human health; a chemicals testing program to develop adequate information on frequently encountered hazardous substances; and a grant program to assist States that wish to establish demonstration systems of assistance for victims of hazardous substances and wastes.

The bill also includes an amendment that I offered on the siting of hazardous waste facilities.

A critical step in the implementation of a rational, safe hazardous waste program is the creation of new facilities employing the most advanced waste management technologies. But to establish newer, improved facilities, sites on which these facilities can operate must be found and made available. Although most States have enacted or have pending some forms of siting legislation, few, if any, have developed policies and siting programs that will assure continued facility capacity in the long term. Recognizing that, as a general rule, States are not moving aggressively to avoid the creation of future Superfund sites, an amendment on siting of hazardous waste facilities was adopted by the Committee on Environment and Public Works.

This section of the bill provides that, effective 3 years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to RCRA-approved facilities for the treatment or disposal of all of that State's hazardous wastes for the next 20 years.

The availability of funds for removal actions is not affected. The short-term, emergency cleanup of, for example, a roadside spill or a stack of drums that are about to explode could proceed. What will be withheld are funds for "remedial actions," the long-term, permanent cleanup of sites on the National Priority List.

To avoid a cutoff of funds, each State is required to develop State policies and siting programs that will make the best use of existing facilities in the short term and will assure continued facility capacity in the long term. The details of the siting process will differ depending on the circumstances of each State.

A site in every State is not required. In some cases, multistate efforts may be appropriate. Use of binding agreements through interstate compacts guaranteeing access to a facility is only one example of how a State may provide the requisite assurances. State or local ownership and operation of facilities or contracts with private facilities may also suffice.

The rationale for this requirement is straightforward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. Pressures from local citizens place the political system in an extremely vulnerable position. Local officials have to respond to the fears of local citizens. The broader social need for safe hazardous waste management facilities often has not been strongly represented in the siting process. A common result has been that facilities have not been sited, and there has been no significant increase in hazardous waste capacity over the past several years. While everyone wants hazardous waste managed safely, hardly anyone wishes it managed near them. This is the NIMBY syndrome (not in my backyard). Yet if the RCRA and Superfund Programs are to work—if public health and the environment are to be protected—the necessary sites must be available.

Mr. President in conclusion, S. 51 is a good bill. It is a bill that deserves to be enacted into law. As a member of both the Committee on Environment and Public Works and the Committee on Finance, the two committees that have written and recommended passage of this bill, I urge my colleagues to support it. Time is of the essence. The issues of public health and environmental protection are too important to ignore. We have an opportunity to enact a fivefold expansion of the current Superfund and to correct many of the problems that have plagued EPA's management of the program. It is an opportunity we must not squander.

Mr. MITCHELL. Mr. President, we bring to the Senate today the Superfund Improvement Act of 1985. This bill is significant in several respects.

First, and most important, it embodies a continued commitment by the Federal Government to the protection of the health and welfare of the people of this country from the dangers of uncontrolled hazardous substances in the environment. The Superfund law enacted in 1980 is a public health statute. We have made a judgment with the bill before us today that the current law is fundamentally sound, its purposes worthy, and its provisions workable.

Second, this bill represents a judgment that the principle of liability upon which the law is based, that those responsible for harm to health and the environment should be held accountable for that harm, continues to be appropriate.

Third, this bill represents a continued commitment to dealing with uncontrolled hazardous substances in the environment even when a responsible party cannot be found, by providing an expanded fund to finance such cleanups.

Fourth, this bill makes improvements in the Superfund Program based on our first 5 years of experience with its implementation.

In 1980, the Superfund bill faced many obstacles to its passage. As we stand here today in 1985, much of the opposition to the basic concept of the establishment of a liability regime and a fund has dissipated. The continuation of both aspects of the law is no longer an issue. This is gratifying, in a sense, to those of us who stood before this body in 1980 and warned that the legacy of past haphazard waste disposal represented perhaps the most serious public health and environmental threat in our modern history. There is, however, no consolation in having been correct in our assessment of the need for the Superfund Program. We did not in fact understand 5 years ago the true dimension of the threat of uncontrolled toxic substances in the environment.

Since the passage of Superfund we have learned that the current estimate of abandoned waste sites across this country is at least 22,000 and growing. EPA anticipates that the national priorities list of the worst sites in the country, thus eligible for Superfund money, will grow to 1,500 or 2,500 over the next several years. According to EPA, "depending on assumptions about the size of the national priorities list, the average cost of a remedial action, and the level of responsible party contributions to cleanup actions, future funding needs could range from $7.6 billion to $22.7 billion, in 1983 dollars." This estimate of needs is based only on the more traditional waste sites and the more obvious hazardous releases into the environment. There are, however, a number of emerging problem areas which could expand dramatically the needs of the program, according to EPA. These include currently operating hazardous waste facilities which are expected to close soon, municipal landfills, industrial landfills, mining waste sites, leaking underground storage tanks, contamination from agricultural uses of pesticides and radioactive sites.

It is clear by any estimate that is used that the problem is even more of a health threat than the Congress thought, and that even this reauthorization of the law for an additional 5 years will be only another step in addressing it, not a complete solution.

Indeed, until our modern technology advances to a point that we minimize dramatically the hazardous byproducts of our industrialized society, we can reduce but not eliminate the risk posed by hazardous waste.

Nevertheless, this is a strong piece of legislation which continues what we set in motion in 1980, at an accelerated pace, but one which is in fact realistic.

I would like to discuss in greater detail the aspects of this bill which are most significant in my view.

STRICT LIABILITY

One of the integral parts of the Superfund law is the standard of care, strict liability, which is imposed on those who generate, transport, store or dispose of hazardous substances. S. 51 retains that high standard of care. Under the standard of strict liability, the Federal Government does not dictate how a business must act, what it should make, how it should transport its products, or what means of disposal it should use. It does, however, determine in advance what the legal consequences of such activities may be if they result in harm.

When the members of the Committee on Environment and Public Works first looked at the problem of uncontrolled releases of hazardous substances into the environment in 1980, we were confronted with a basic policy consideration: Who should be held liable and under what standard of liability? It was clear even 5 years ago that the Federal Government was not in a position to simply fund 100 percent of the remedial action required to make thousands of abandoned chemical dumpsites safe for surrounding communities. It was also clear then that waste sites were only part of the problem. An equally alarming problem was the devastating effect of ongoing releases of toxic chemicals into the environment through spills, discharges and intentional dumping.

Not only did we feel that the Federal Government could not fund by itself the necessary cleanup, we also felt that the Federal Government should not remedy by itself the consequences of dangerous activities by private parties.

We adopted the concept of strict liability for a number of reasons, the principal ones being fairness and equity. By imposing strict liability on the person creating a hazard, the Superfund law assures that those who caused the harm bear the cost of that harm, and encourages the elimination of as many risks as possible to avoid liability.

This standard of care is a concept well-recognized and accepted in courts of law for over 100 years. The leading case from which strict liability was developed, Rylands against Fletcher, articulated the theory in this way in 1868:

> We think that the true rule of law is that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape.

Since that decision was handed down, the concept of strict liability has been adopted in every State in this country. Even the few jurisdictions which reject Rylands against Fletcher by name have accepted the principle of the case under the guise of other theories; most frequently, those courts impose the same strict liability rule under the theory of nuisance.

The acceptance of the strict liability concept as the majority rule in this country is reflected in the adoption of strict liability by the American Law Institute as early as 1936. A second restatement was adopted in 1976. I would like to quote it, and remind this body that this was written before the Superfund law was even envisioned.

The second restatement says:

> One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm.
>
> The liability stated in this section is not based upon any intent of the defendant to do harm to the plaintiff or to affect his interests, nor is it based upon any negligence, either in attempting to carry on the activity itself in the first instance, or in the manner in which it is carried on. The defendant is held liable although he has exercised the utmost care to prevent the harm to the plaintiff that has ensued. The liability arises out of the abnormal danger of the activity itself, and the risk that it creates, of harm to those in the vicinity. It is founded upon a policy of the law that imposes upon anyone who for his own purposes creates an abnormal risk of harm to his neighbor, the responsibility of relieving against that harm when it does in fact occur. The defendant's enterprise, in other words, is required to pay its way by compensating for the harm it

causes, because of its special, abnormal and dangerous character.

This principle was not created in 1980 in the first Superfund law. It existed before 1980 in every State in the Union. The Congress simply made the judgment in 1980 that the principle of strict liability should be extended uniformly to activities involving hazardous substances. This standard of care has been effective in the past 5 years in securing numerous judgments and settlements with private parties at hazardous waste sites across the country, a result which could not have been achieved under a less demanding standard of liability such as negligence.

The standard of liability impsed under Superfund is derived from the standard of liability imposed under section 311 of the Clean Water Act, which is strict, joint and several. Courts have held that where appropriate, liability under Superfund may be joint and several, as a matter of Federal common law. This principle has been applied by courts on a case-by-case basis where the harm caused by hazardous substances is indivisible. When a responsible party can establish to the court's satisfaction that its contribution to a site, and therefore, its cleanup, is divisible, joint and several liability will not be impsed. This application is consistent with the restatement second of torts that:

> (1) Damages for harm are to be apportioned among two or more causes where
>
> (a) there are distinct harms, or
>
> (b) there is a reasonable basis for determining the contribution of each cause to a single harm.
>
> (2) Damages for any other harm cannot be apportioned among two or more causes.

It has been suggested by some that the use of joint and several liability is an extraordinary tool which is unfair in concept and punitive in its implementation. However, as the Administrator of the EPA, Lee Thomas, has stated, it is an extraordinary tool for an extraordinary problem. I believe that the Government has used this tool with restraint, and that its continued use is important to the enforcement program.

One proposed change to the law is a mandatory apportionment scheme under which the burden of proof would fall on the Government to establish the portion of the harm for which each party is responsible, and apportion the cleanup costs accordingly. While this may have a surface appeal, the impacts of such a change on the Superfund Enforcement Program would be far-reaching.

The Department of Justice as well as the Environmental Protection Agency have testified on this issue. According to the EPA, "a mandatory apportionment scheme would severely impair the effectiveness of the Superfund Enforcement Program. Substituting an apportionment scheme for the strict, joint and several liability regime established under the existing statute would delay cleanups and increase costs, without providing substantially increased fairness in cost apportionment among responsible parties."

I ask unanimous consent that a detailed description of the negative impacts of apportionment written by the Environmental Protection Agency be printed in the Record following my remarks.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

(See exhibit 1.)

VICTIM COMPENSATION

Mr. **MITCHELL**. Mr. President, as many of the Members of the Senate recall, a provision of the 1980 bill approved by the Committee on Environment and Public Works provided compensation for medical expenses to persons injured by exposure to hazardous substances in the environment. Two alternative remedies were provided, an administrative system for reimbursement of out-of-pocket medical expenses and burial benefits, and a Federal cause of action in district court to recover the same expenses, as well as compensation for pain and suffering.

Under threat of a filibuster in the waning days of the 96th Congress, the proponents of our committee bill dropped that provision for compensation of human victims, and retained only compensation for damage to publically-owned natural resources.

Thus, for the past 5 years, we have had the incredible and unjustifiable standard that says that if certain property is damaged by hazardous waste release, there can be compensation; but if a human being is damaged by the same release, there can be no compensation from this fund.

We authorized instead of that a study of the adequacy of existing remedies to compensate persons injured through exposure to toxic substances in the environment.

The group which conducted the study was composed of representatives of four major legal organizations, the American Bar Association, the American Law Institute, the American Trial Lawyers Association, and the National Association of Attorneys General. Their report concluded:

> This review of existing causes of action and barriers to recovery has shown that although causes of action do exist for some plaintiffs under some circumstances, a private litigant faces substantial substantive and procedural barriers in an action to recover damages for personal injury or property damage due to hazardous wastes, particularly where the individual claims are relatively small.

The study group made 10 recommendations, one of which was an administrative system of compensation. The bill before us does not fully implement that recommendation. Rather, it establishes a demonstration program of administrative victim assistance. I personally believe that such a program could be and should be operated in every State of the Nation, because no State is immune from the human health threat of hazardous substances in the environment.

However, this demonstration program would make available only $30 million per year to up to ten areas of the country selected by the Environmental Protection Agency. Several limitations have been incorporated into this provision to address concerns raised by Members of this body and by other interested parties. The most obvious is, of course, the limited demonstration nature of the program, and the dollar limitation. This program can last no longer than 5 years and can spend no more than $30 million a year. The Congress must make an affirmative judgment to continue this program during the next authorization of the Superfund law. Otherwise, it will expire.

Other limitations include: A requirement that any fund expenditure under this program be repaid from a judgment or settlement received by a person for medical expenses; a requirement that this remedy be used only when a solvent responsible party is not available; a requirement that the benefits of this program are available only to those who have no other form of health insurance, either public or private; and the use of private insurance companies, not a new Federal bureaucracy, to administer the assistance programs.

I do not want to mislead anyone as to the adequacy of this provision as an ultimate solution. It is a bare minimum, designed to provide a safety net for those who are truly without recourse when injured by a toxic chemical in the environment. It is a pilot program designated to determine whether a mechanism for victim assistance can work without the drastic impacts predicted by its detractors.

I ask unanimous consent that a description of the provision be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF VICTIM ASSISTANCE DEMONSTRATION PROGRAM—(SECTION 129 OF S. 51)

FUNDING

Funding of $30 million per year is authorized from the general revenue contribution to the Trust Fund for five years, a total of $150 million of the $7.5 billion Fund.

ELIGIBILITY

A geographic area for which a health assessment has been performed which reaches specified conclusions may be nominated by the State in which it is located for participation in a victim assistance demonstration program.

Section 116 of S. 51 already requires the Agency for Toxic Substances and Disease Registry to perform a health assessment at each site on the National Priorities List within two years and at sites nominated by individuals and doctors.

A health assessment is defined in S. 51 as an assessment of the potential risk to human health posed by an individual waste site. This determination is based on factors such as the nature and extent of contamination, the pathways of human exposure, the size and susceptibility of the community which is exposed, and identification of health effects assocated with the substances at a site. This information will be used to make a determination as to whether a hazardous substance at a site is associated with an illness in the surrounding community.

Section 129 specifies that in order for an area to be eligible, its health assessment must indicate that:

(1) There is a disease or injury for which the population of that area is at significantly increased risk as a result of the release of a hazardous substance;

(2) Such disease or injury has been demonstrated to be associated with exposure to a hazardous substance; and

(3) The area contains indiviudals who have been exposed to a hazardous substance in the environment.

SELECTION

From the areas nominated, the President will select no less than five and no more than ten areas for demonstration programs.

The selection must take into account the extent of the problem at a given site and the experience of the State and local government in administering hazardous waste programs.

VICTIM ASSISTANCE

A State selected to operate an assistance program for a particular site will provide medical testing and certain health insurance benefits to members of the exposed population who have no other source of health insurance. The mechanism for providing assistance will be insurance policies which are secondary to all other coverage carried by an individual.

Persons who have a disease or injury identified in the health assessment document as being associated with the substance to which the individual has been exposed are eligible for past out-of-pocket medical expenses relating to that illness, and a secondary insurance policy for future out-of-pocket expenses relating to that illness.

Persons who have been exposed but have no present symptoms of an identified illness are eligible for a secondary insurance policy for periodic medical screening to determine the presence of the illness in the future.

LIMITATIONS

All insurance benefits are secondary to all other coverage available to a person in the exposed population. It is estimated that approximately 90% of the U.S. population has some form of medical benefits from a private or public source.

For private insurance policies, the determination as to whether a person has primary health insurance will be made as of thirty days prior to the date a State nominates an area for participation. This will guard against the modification or cancellation of an existing policy in expectation of benefits from this program.

No double recovery is allowed. The proceeds of any claim against a responsible party must be repaid to the Fund by any individual who has received assistance under this program.

Assistance under this provision is not available where a solvent responsible party is paying compensation or has accepted liability for medical assistance.

EVALUATION

The President is directed to submit annual reports, starting in FY 1987, on the implementation of this program, including an evaluation of each of the State programs.

Each participating State is directed to submit a report to the President and the Congress by January 1, 1990 on the implementation of its program.

Mr. **MITCHELL**. Mr. President, there are several additional modifications that we have made to improve the implementation of the program based on our experience. Most notable is the increased funding for the cleanup of those sites for which no responsible party can be found. Other significant changes in the law include an explicit directive to EPA to clean up all sites to levels that are protective of human health and the environment, and mandated health studies at all national priorities list sites.

Mr. President, I cannot emphasize strongly enough that this is a public health statute. A delay in the reauthorization of this law could mean literally continued harm to persons exposed to these toxic chemicals in the environment. This result can be avoided, and I am confident that we will act expeditiously to avoid it.

EXHIBIT 1

What are the enforcement program concerns related to eliminating joint and several liability? What will elimination of this standard of liability do to our present enforcement program? How would mandatory apportionment schemes be implemented?

ANSWER

As described in detail in the answer to question number 4, below, a mandatory apportionment scheme would severely impair the effectiveness of the CERCLA enforcement program. Substituting an apportionment scheme for the strict, joint and several liability regime established under the existing statute would delay cleanups and increase costs, without providing substantially increased fairness in cost apportionment among responsible parties.

Under the theory of joint and several liability as currently interpreted by the courts, responsible parties have the task of apportioning costs among themselves, unless they can demonstrate to the court's satisfaction that the costs are divisible. An apportionment scheme would instead require courts or the Federal government to apportion the cost of cleanup among parties, or between responsible parties and the Fund, based on largely subjective factors and on evidence presented by the parties and the government.

Apportionment schemes would be most detrimental to the enforcement program if they authorized apportionment in advance of the government's action to compel responsible parties to undertake a cleanup. Under the existing system, courts may apportion costs following an adjudication of liability and a determination that parties are jointly and severally liable.

The specific drawbacks of a mandatory apportionment scheme are:

Delayed cleanups;

Reduced incentives for collective action and negotiation and an increased chance of litigation;

Complex administration; and

Inadequate consideration of fairness among different types of responsible parties.

The following sections discuss these drawbacks.

DELAY OF CLEANUP

EPA would have to determine the appropriate share of cleanup costs for each responsible party at a site before it could negotiate with responsible parties or litigate for cleanup. The government would then have to negotiate with each party individually. Even Fund cleanups would be more costly and slower because of the need to obtain the additional evidence during the Fund cleanup that would be needed for cost recovery actions. Evidence preservation may require, for example, the EPA's contractor perform a complete sampling and analyses of every drum during a removal action.

The government would be required to make a number of additional factual showings. For example, it would be under a much more difficult burden to show who put what substances where, whether particular substances migrated and to where they migrated, the cost of cleaning up particular substances, and the toxicities of particular substances both alone and in conjunction with other substances at the site. In many cases, EPA could not sustain this burden at all, because of the destruction or loss of responsible party records or because the waste management practices used at the site caused an indivisible harm. Thus, Section 106 actions would be made impracticable or impossible in many cases by the high costs of obtaining evidence and the increased time that it would take to get it. The unavailability of private party actions under Section 106 would in turn increase the burden on the Fund and on EPA's ability to undertake and manage response actions.

IMPACT ON NEGOTIATIONS

Apportionment discourages cooperation among responsible parties. Under joint and several liability, the government negotiates with PRPs as a group. Joint and several liability provides the incentive necessary to reach a collective settlement. This incentive would be destroyed if each party could be held liable for no more than a specific share.

Rather than assuming the responsibility for cleanup and negotiating costs among themselves, responsible parties would litigate with the government concerning the fairness of the apportionment scheme and of the scheme's application to them. Responsible parties are thus encouraged by apportionment to wait and fight the government's case against each of them.

COMPLEXITIES OF ADMINISTRATION

No single factor is likely to be adequate for apportioning costs among responsible parties. Apportionment schemes suggested for CERCLA have generally involved a mix of factors.

The following are typical of the factors suggested in apportionment schemes:

Ability of the parties to demonstrate that their contribution to a discharge, release or disposal of a hazardous waste could be distinguished;

The amount of hazardous waste involved;

The degree of toxicity of the hazardous waste involved;

The degree of involvement by the parties in the generation, transportation, treatment, storage or disposal of the wastes;

The degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of such hazardous wastes; and

The degree of cooperation by the parties with Federal, state or local officials to prevent any harm to public health or the environment.

Application of the criteria would involve, for each party, answering complex factual questions and making subjective judgments on each criterion. Responsible parties are likely to seek administrative or judicial review of administrative decisions made by the government even if the government's determinations are entitled to some persumption of validity.

The standards used for assessing the degree of toxicity or hazardousness under an apportionment scheme would likely be subject to intense criticisms from responsible parties. For example, EPA received objections from commenters in developing the toxicity standards for use in listing sites on the NPL, because of the broad range of substances and effects that might be considered. Comparisons between different types of hazards may be viewed as subjective. The objections were the basis for criticisms of the NPL, which simply helps to identify priorities for cleanup. If the factors will be used to determine the extent of cleanup costs, they are likely to be a more intensive focus of criticism, disagreement, and, ultimately, litigation.

In any case, EPA resources would be diverted from identifying the appropriate remedy and overseeing cleanup to performing economic allocations among responsible parties and carrying out investigations designed for litigation needs.

Moreover, a mandatory apportionment scheme would require the government to sue all PRPs at a site, including de minimis parties, to get a complete cleanup or complete recovery of costs. This would present significant logistical problems at larger sites that have large number of PRPs and would lead to further unaffordable delay.

In addition, as a result of mandatory apportionment the government might be forced to develop or review response plans from each party that are tailored to its individual obligations. This could lead to insurmountable coordination problems with multiple parties working at the same site.

FAIRNESS AMONG RESPONSIBLE PARTIES

Our experience with responsible parties apportioning costs among themselves at sites has been good. Initially they disagree as to what methods are fair. Eventually, however, they negotiate a consensus. There is no reason to believe that an apportionment scheme imposed by the government will be viewed as any more fair than one which they develop themselves.

Determination of fairness are highly subjective, and no single government scheme is likely to be acceptable to all parties. For example, contributors of low-volume, high-toxicity wastes are likely to favor a volumetric approach, while contributors of high volumes of comparatively innocuous wastes are more likely to object to it.

In sum, although the concept of apportionment is attractive, the practical difficulties of a mandatory apportionment scheme would substantially interfere with attainment of the goals of CERCLA. Incentives for private party cleanup before litigation would be reduced, and the government would not be able to implement an apportionment scheme that is markedly more reasonable, fair, or efficient than apportionment as currently practiced by the parties and the courts. Apportionment before judgment would necessarily be based on inadequate base of information.

Mr. STAFFORD. Mr. President, I thank the able and distinguished Senator from Maine for his contribution to the development of the legislation we have before us and for his contribution over the years to the Committee on Environment and Public Works in many ways, especially in environmental fields. His understanding of the judiciary and the legal problems is probably the best of anyone on our committee and has been especially valuable to the committee and its work over the years since he has become a Member.

Mr. President, we hope that we may be in a position before 12 o'clock, when we understand the Senate will recess for 2 hours, to act on the committee amendments by unanimous consent. That has not yet been cleared, but it will be the chairman's intention to move, with the proper phraseology, that we do that before 12 o'clock, if clearance occurs.

In the meantime, for the committee, the chairman points out to Senators or members of their staffs who may be listening to the proceedings this morning that there are a number of amendments to this measure which have been worked out and can be dealt with promptly by the committee.

It is this Senator's understanding that we will revert to this measure when we have concluded work on the immigration bill this afternoon. I am unable to say what time that may occur; but in the hope and with the reasonable expectation that that may occur before it is time to close business for the day, I urge Senators and staff who may be listening to these proceedings for them that if they have amendments which we believe we can deal with on a prompt basis, they be available late this afternoon so that we can dispose of as many amendments as possible.

Mr. President, in view of the time we still have available, let me touch on some of the amendments which we hope we can dispose of today, in order to save the time of the Senate tomorrow.

There are the amendments agreed to between this Senator and members of the Committee on Environment and Public Works and Senator THURMOND and member of the Committee on the Judiciary with respect to some modest changes in S. 51 which the Judiciary Committee has suggested, as individual members, and which Senator THURMOND and I have agreed to, which I propose to offer on his behalf and mine this afternoon.

There are State standards, and amendments affecting them possibly to be offered by Senator HART. I should say parenthetically that things change so fast on a matter like this that I may recount some amendments which actually will not be put forward. But these as we understand it at the moment are likely amendments. There may be an amendment with respect to Government inheritance of sites. This amendment would exempt State and local governments from liability claims and cases where they unknowingly acquired property containing existing hazardous waste sites. That may be offered either by the committee or by Senator BENTSEN. There may be an amendment offered by the committee or Senator HEINZ with respect to post-closure liability fund.

This amendment would either repeal the post-closure fund or require modification that it be studied. The Senator from Vermont, chairman of the committee, may offer an amendment with respect to trigger overincrease. This amendment would increase the ceiling level within the fund at which point taxation would temporarily cease until obligations increased—in other words, not to impose tax when the money was not necessary.

We understand in the committee that Senator KASTEN may have a possible amendment. We also understand that Senator BENTSEN, who may be joined by the committee or the committee acting jointly, will offer an amendment with respect to methane recovery operators. We further understand that Senator WEICKER may offer an amendment with respect to lead studies. There may be an amendment offered by the committee with respect to hazardous substances inventory.

There may be an amendment offered by this Senator, Senator BENTSEN, and others with respect to risk retention programs. This amendment would enable companies to organize or pool together to provide self-insurance. The intent is to address the unwillingness of insurers to underwrite environmental pollution policies. There likely will be an amendment offered by Senator BRADLEY with respect to the use of lead solder. The committee, Senator BENTSEN, or all of us may jointly offer an amendment with respect to State and local responsibility.

There likely will be an amendment offered by Senators MITCHELL and LAUTENBERG with respect to requiring EPA to study effects of indoor air pollutants with emphasis on radon gas, a matter on which I believe the able Senator from Maine has held a hearing. These are some of the amendments which may be offered, and they are all relatively noncontroversial and in the opinion of this Senator as chairman of the committee will require very little time for disposition.

Mr. GORE. Mr. President, today we begin debate on S. 51, the Superfund Improvements Act of 1985. In my opinion, this is one of the most important pieces of legislation that this Senate will consider.

As my colleagues are all aware, the original Superfund law—the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA]—was passed in 1980 in the final days of the 96th Congress. The legislation was the product of a long and deliberative process, during which the Congress and the Nation as a whole had become painfully aware of the great threat posed to our health and safety by abandoned hazardous waste sites.

It doesn't seem that long ago that the tragedy of Love Canal was first brought to the attention of the American public. Indeed, as a freshman Member of the House of Representatives in 1977, I participated in one of the first congressional hearings on Love Canal. Although we were somewhat new to the issue, it did not take long for those of us in Congress at that time to realize that Love Canal was only a small manifestation of a much, much larger problem.

Numerous hearings in the Congress soon revealed that for decades the Earth had been utilized as a garbage can for all the hazardous and toxic wastes that American industry could produce. Because no accurate records had been kept of the sites and the wastes that went in them, it was difficult to gauge exactly how large the problem was. Nonetheless, we knew that the thousands of sites of which we were aware were simply ticking time bombs waiting to explode. Something had to be done.

The answer that we came up with was the Superfund. To be sure, it was not a perfect solution; but it was a start. And more than anything else, it represented a commitment on the part of the Congress to make certain that the many dangerous hazardous waste sites located throuhout this country would in fact be cleaned up.

I was one of the principal authors of the Superfund law in 1980, and I take a special point of pride in it. I believe that it is a good law and one that has worked remarkably well over the last 5 years despite all the troubles that have plagued its administration. It has helped us begin to come to grips with the realities of our national hazardous waste problem and to rectify the tragedies that the indiscriminate disposal of waste can cause.

Today, as we being our debate on this legislation, the question is not whether we should reauthorize the Superfund, but what improvements must be made to the law to ensure that it is as effective as it can be. I believe that we have an obligation to the people of this country to make the Superfund as strong as it possibly can be.

The original Superfund plan was designed to raise a total of $1.6 billion over a 5-year period. Our experience with the program since its creation, however, has demonstrated beyond doubt that much, much more is needed. Indeed, it was clear very soon after the fund's establishment that $1.6 billion was not enough even to begin to clean up the 410 hazardous waste sites that were included on the original national priorities list. Today, that list exceeds 800 sites—and it is growing.

The broad dimensions of our hazardous waste problem were starkly illustrated by a report issued last December by the Environmental Protection Agency pursuant to section 301 of CERCLA. The purpose of that report was to review the effectiveness of the Superfund and to evaluate the future needs of the fund.

The findings of that report were incredible. EPA estimated that the national priorities list will eventually contain between 1,500 and 2,500 sites. EPA's baseline estimates, using its current program experience, was that the list will actually increase to approximately 1,800 sites. And remember these are only the very worst sites in the country. There are tens of thousands of other sites out there that are not on the list. The national priorities list is just the tip of the iceberg.

As disturbing as the number of priority sites was EPA's estimate of the cost to clean these sites up. EPA concluded that the future funding needs of the Superfund Program could range from $7.6 billion to $22.7 billion in fiscal year 1983 dollars. Specifically, EPA estimated that $11.7 billion would be needed to address the 1,800 sites that the agency anticipates will eventually comprise the national priorities list. Clearly, this is a far cry from the $1.6 billion raised by the present program.

Even more frightening are the estimates produced by the Congressional Office of Technology Assessment. In a report released in April of this year, OTA stated that the national priorities list could reach as many as 10,000 sites. The cost to clean up these sites would be staggering: $100 billion in OTA's opinion.

Regardless of which figures you believe, one thing is indisputable: The size of the Superfund will have to be increased—and it must be increased dramatically. I intend to support a greatly expanded Superfund, and I urge my colleagues to do the same.

In addition to increasing the amount of money in the Superfund itself, we must make sure that the law is as strong as it can be with regard to its liability and enforcement provisions. During the course of the deliberations on S. 51 there will likely be several atlaw. We must not let these attempts succeed. Indeed, if anything, we should seek to strengthen the law. We must make sure the EPA is equipped with every tool it needs to persuade those parties responsible for the waste to clean up the sites or to force them to pay for any cleanups that EPA must conduct itself. To do otherwise would be foolhardy.

Mr. President, I think that the duty of this body to enact the strongest possible Superfund bill is very clear. We know the size of the problem that confronts us. And we know what we must do about it. It is now time for us to do it.

FEDERAL FACILITIES

Mr. PROXMIRE. Mr. President, the Environment and Public Works Committee included almost all of S. 517 as the new Federal facilities section of Superfund.

I introduced S. 517 on February 27 with Senators HART, DIXON, SIMON, and GORE, and with the support of the National Wildlife Federation & Environmental Policy Institute.

Senator HART offered S. 517 during committee markup.

With my language, Superfund for the first time treats Federal wastesites, civilian and military, in the same way as private ones.

Under its terms, EPA is put on a schedule for assessing and ranking Federal sites. Affected Federal agencies are required to begin remedial actions for those sites so seriously polluted that they are included on the national priority list.

EPA enters into interagency agreements with those Federal agencies with priority sites, insuring cleanup as expeditiously as practicable.

I also favored inclusion in Superfund of my provision which authorized legal actions by EPA against Federal agencies which fail or refuse to comply with site cleanup requirements. Although this was omitted by committee, the newly added citizen suit section should provide an adequate substitute for enforcing agency compliance.

Mr. President, existing law requires Federal cleanup but almost none takes place because a series of Executive orders effectively nullify Defense Department compliance.

Unfortunately over 450 military installations contain seriously contaminated sites. Although the exact number of federally owned or operated toxic wastesites is still unknown, estimates by the National Wildlife Federation put the total as high as 1,400.

Even worse, the entire Defense Department completed only 11 remedial actions against toxic wastesites in an almost 10-year period. Civilian agencies performed no better.

The new Federal facilities section should change this dismal record and convert Uncle Sam into Mr. Clean.

I thank my colleagues once again for including it in the bill.

Mr. STAFFORD. Mr. President, unless there is someone else who wishes to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I wish to remind Members and staff who may be listening that it is the hope and expectation of the chairman of the Committee on Environment and Public Works that we will have an opportunity late in the afternoon to dispose of noncontroversial amendments. We would appreciate the cooperation of Senators who have such amendments in accomplishing that desire.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon having arrived, the Senate will now stand in recess until 2 p.m.

Thereupon, at 12 noon, the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. EVANS].

* * * * * * *

SUPERFUND IMPROVEMENT ACT OF 1985

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. 51, Superfund, not to exceed 8:30 p.m. this evening for the purpose of considering amendments to be disposed of without rollcall votes.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

The Senate continued with the consideration of the bill.

AMENDMENT NO. 630

Mr. STAFFORD. Mr. President, I have a series of eight purely technical amendments to S. 51, seven of which have been requested by the Environmental Protection Agency to assure that the language in the bill not create any unnecessary complications or undesirable results. The eighth corrects a minor problem in the existing law.

Mr. President, the managing minority member of the committee has asked me to go ahead. He is temporarily engaged elsewhere, but he joins me in offering these amendments, which I send to the desk.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for himself and Mr. BENTSEN, proposes amendments numbered 630.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

On page 59, lines 19 and 20, strike out the phrase, "a facility" and insert in lieu thereof: "residential buildings or business or community structures".

On page 116, lines 23 and 24, strike out the phrase, "or disposal" each time it appears, and on line 24, strike "or" before "(B)".

On page 109, following line 14, insert the following new section 135 and renumber the following sections accordingly:

"NOTICE OF CERLCA ACTIONS

"SEC. . Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(l) NOTICE OF ACTIONS.—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator.".

On page 71, after line 8, insert the following:

"(5) No person required to provide information or documents under this Act may claim that the information is entitled to protection under this section unless such claimant shows that:

"(A) the claimant has not disclosed the information to any other person, other than to an employee of the claimant or a person who is bound by a confidentiality agreement or to a person to whom the data has been supplied on a confidential basis in compliance with this Act, and the claimant has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures;

"(B) the information could not reasonably be discovered by anyone other than such persons in the absence of disclosure; and

"(C) knowledge of such information gives the claimant an opportunity to obtain a signficant advantage over competitors who do not know such information and disclosure of the information is likely to cause substantial harm to the claimant's competitive position.

"(6) The following information with respect to any hazardous substance as defined in section 101(14) shall not be entitled to protection under this section:

"(A) The chemical name, CAS number, trade name, and common name of the hazardous substances;

"(B) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius;

"(C) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards;

"(D) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

"(E) The location of disposal of any waste stream;

"(F) The identity and quantity of any waste stream;

"(G) Any monitoring data or analysis of monitoring data pertaining to disposal activities;

"(H) Any hydrogeologic or geologic data; and

"(I) Any groundwater monitoring data.".

On page 118, following line 19, insert the following new section:

PROCUREMENT PROCEDURES

SEC. . Title 1 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new section at the end thereof:

"PROCUREMENT PROCEDURES

"SEC. . Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solitictation or synopsis with respect to such procurement.".

On page 94, strike lines 14-25, and on page 95, strike lines 1-15, and substitute the following:

"(c) In any case where a person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or where with reasonable diligence jurisdiction in the Federal Courts cannot be obtained over a person liable under section 107 likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility for that person. In the case of any action pursuant to this subsection, such guarantor shall be [illegible]d to invoke all rights and defenses [illegible] would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) The total liability under this Act of any guarantor shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument provided by the guarantor to the person liable under section 107: *Provided*, That nothing in the subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to the person liable under section 107 including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim: *Provided further*, That nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under section 107 or 111 of the Act or other applicable law."

On page 161, after line 14, insert the following new section:

"HAZARDOUS MATERIALS TRANSPORTATION

"SEC. . (a) Section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "within ninety days after the date of enactment of this Act" in the first sentence and inserting in lieu thereof "by June 1, 1986,"; and by inserting the words "and regulate" before the words "as a hazardous material".

"(b) Section 306(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting the words "and regulation" after "prior to the effective date of the listing".

On page 71, line 8, after the first period insert the following: "Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable any grant of access to properly classified information under any provision of this Act, including section 103.".

Mr. STAFFORD. Mr. President, as I said earlier, these are purely technical amendments which have been agreed to by the committee. They are offered by the Senator from Vermont for himself and the Senator from Texas [Mr. BENTSEN], as ranking minority member of the committee. I urge their adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendments.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the amendments be considered and voted en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the amendment (No. 630) was agreed to.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 631

(Purpose: To clarify the liability of the United States for releases from facilities in which munitions-producing equipment is owned by the Department of Defense)

Mr. STAFFORD. Mr. President, I send an amendment to the desk in behalf of the Senator from Wisconsin [Mr. KASTEN]. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for Mr. KASTEN, proposes an amendment numbered 631.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 47, after line 19, insert the following new section and renumber succeeding sections accordingly:

"DEDICATED DEFENSE PRODUCTION

"SEC. . Section 101(20) of the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980 is amended by adding the following subparagraph:

"( ) in the case of a facility containing any hazardous substance resulting from manufacturing operations dedicated to the production of munitions or ordnance parts for the Department of Defense (or any subdivision thereof) using equipment owned by such Department or subdivision, the term "owner or operator" shall include the United States Government;".

Mr. STAFFORD. Mr. President, the amendment that I have sent to the desk in behalf of Senator KASTEN has as its purpose to assign responsibility and liability to the Federal Government for the cost of cleanup of hazardous substances and other remedial actions at various sites. This responsibility should not apply exclusively to a private party who may have operated a Federal plant that is largely owned by the Government and operated in compliance with Federal guidelines.

● Mr. KASTEN. Mr. President, I have an amendment to S. 51 which I believe is not controversial. It has been cleared on both sides of the isle.

Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, commonly known as Superfund, Congress charged the Environmental Protection Agency with the responsibility of identifying and cleaning up hazardous waste dumps around the Nation.

The overriding concern of this legislation is to protect public health and safety. This means not only cleaning up surface contamination, but also subsurface and off site damage that may be caused by the improper disposal of toxic wastes.

It has become apparent since Congress enacted this legislation that far greater resources are required to adequately protect the public and the resources we all depend on.

Unfortunately, progress has been very slow in cleaning up existing sites. The reasons for this delay are varied, but I believe we will address three of the key reasons as the Senate reauthorizes this key legislation.

First, the funds available to cleanup abandoned sites must be greatly increased. Second, we must shorten the time that responsible parties can spend delaying action to cleanup contamination that they are responsible. And third, the Federal Government must begin to take responsibility for those sites that it is responsible for.

It is this third category that my amendment will address today. I believe that it is time for the Federal Government to begin to live up to the same obligations to protect public health that other producers are expected to comply with.

Specifically, this amendment addresses the cleanup of hazardous wastes that were produced by a partnership between the Government and private industry.

The purpose of my amendment is to assign responsibility and liability to the Federal Government for the costs of cleanup of hazardous substances and other remedial actions at such sites. This responsibility should not apply exclusively to the private party who may have operated a plant that is largely owned by the Government, and operated it in compliance with Federal guidelines.

Under this amendment, responsibility and liability is assigned to the Government on the basis of its ownership of the facility, property, and equipment used in producing a product and the resulting hazardous wastes.●

Mr. STAFFORD. Mr. President, on this side of the aisle, we are prepared to accept the Kasten amendment.

Mr. BENTSEN. Mr. President, I have worked on this amendment with the chairman of the committee and the staff. We think it is an appropriate amendment and we are prepared to accept it. We have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 631) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 632

Mr. STAFFORD. Mr. President, I send an amendment to the desk on behalf of myself and Senator BENTSEN and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for himself and Mr. BENTSEN, proposes an amendment numbered 632.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

STATE AND LOCAL GOVERNMENT LIABILITY

S. 51 is amended by—

(1) On page 88, line 14, inserting after "release" the following: "or threatened release"; and

(2) On page 88, line 7 inserting "(a)" immediately before "Section";

(3) On page 87, line 21, inserting the following:

"(b) Section 101(20) is amended by inserting immediately before the semicolon at the end of clause (A) the following: 'nor does such term include a unit of state or local government which acquired ownership or control involuntarily through bankruptcy, foreclosure, tax delinquency, abandonment, or similar means of alienation;'.".

"(c) Section 101(20) is further amended by deleting clause (iii) and substituting the following: '(iii) in the case of any facility, title or control of which was conveyed due to abandonment, bankruptcy, foreclosure, tax delinquency or similar means to a unit of state or local government, any person who owned, operated or otherwise controlled activities at such facility immediately beforehand.'."

SITES INHERITED BY STATE AND LOCAL GOVERNMENTS

Mr. STAFFORD. Mr. President, there are circumstances when State and local governments find themselves as the owners or operators of sites which are the subject of Superfund responses against their own violition. In some cases this may be due to the automatic shifting of title to real property due to nonpayment of taxes. In others, it may be that a facility has been abandoned and the responsibility shifted away from the original owner or operator to the State or local government. These are not cases where the law intended that governments bear the liability burdens of Superfund, even though they are technically "owners or operators" under the current definition of the law.

I am offering an amendment which would change that definition in recognition of the unique position which units of State and local governments occupy with respect to these facilities. My amendment would exempt units of State and local governments in cases where title or control has shifted to them by virtue of abandonment, bankruptcy, tax delinquency, foreclosure or similar means. The amendment does not diminish the liability of these governments with respect to sites which they might have owned or operated in their own right. But it does not recognize the unique status of governments in terms of their obligation to protect the public, health, welfare and safety, during the course of which they sometimes acquire ownership or control for reasons unrelated to the disposal of hazardous substances.

In addition, my amendment would make one technical amendment to S. 51. The bill as reported holds State and local governments to a fault-based standard of care when they are responding to actual releases of hazardous substances. My amendment extends this same standard to cases where the release was merely threatened, thus allowing government to act to avert danger to the public before it has the opportunity to materialize.

I know of no opposition to or controversy associated with this amendment and hope that it can be adopted.

Mr. President, I know of no opposition or controversy associated with this amendment and on this side of the aisle we are prepared to accept it.

Mr. **BENTSEN**. Mr. President, this covers the situation, as the chairman said, where local governments inherit property, so to speak, through foreclosure or whatever route it might be, and develop a toxic waste site, and they would not be determined owner operators under the provision of this law.

We have no objection to that amendment at all. It is a good amendment.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment of the Senator from Vermont.

The amendment (No. 632) was agreed to.

Mr. **STAFFORD**. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **BENTSEN**. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. **STAFFORD**. Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **STAFFORD**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

AMENDMENT NO. 633

Mr. **STAFFORD**. Mr. President, on behalf of myself and Senator BENTSEN, I send an amendment to the desk and I ask that it be stated.

The **PRESIDING OFFICER**. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for himself and Mr. BENTSEN, proposes an amendment numbered 633.

Mr. **STAFFORD**. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without obligation, it is so ordered.

The amendment is as follows:

POLLUTION LIABILITY INSURANCE

Add the following at the end thereof:

"TITLE III

"AMENDMENTS RELATED TO THE INSURANCE OF POLLUTION LIABILITY

"SEC. 301. The Comprehensive Environmental Compensation and Liability Act of 1980 is amended by adding the following at the end thereof:

'TITLE IV—POLLUTION INSURANCE

"SECTION 401. This Title may be cited as the "Pollution Liability Insurance and Risk Retention Act".

DEFINITIONS

'Sec. 402. (a) As used in this Title—

'(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

'(2) "pollution liability" means liability for injuries arising from the release of hazardous substances, pollutants or contaminants;

'(3) "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any state

'(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability or of its group members;

'(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

'(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

'(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

'(4) "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis; and

'(5) "State" means any State of the United States or the District of Columbia.

'(b) Nothing in this Title shall be construed to affect either the tort law of the law governing the interpretation of insurance contracts of any State, and the definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this Act, including recognition or qualification of risk retention groups or purchasing groups.

'Sec. 403. (a) Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

'(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

'(A) comply with the unfair claim settlement practices law of the State;

'(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State;

'(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism;

'(D) submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses;

'(E) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process, and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction;

'(F) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

'(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

'(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

'(G) comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F) of this paragraph;

'(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

'(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

'(4) otherwise discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

'(c) The exemptions specified in subsection (a) apply to—

'(1) pollution liability insurance coverage provided by a risk retention group for—

'(A) such group; or

'(B) any person who is a member of such group;

'(2) the sale of pollution liability insurance coverage for a risk retention group; and

'(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

'(d) A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

PURCHASING GROUPS

Sec. 404. (a) Except as provided in this section, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

'(1) prohibit the establishment of a purchasing group;

'(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

'(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

'(4) prohibit a purchasing group from obtaining insurance on a group basis because that group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

'(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

'(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

'(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

'(8) otherwise discriminate against a purchasing group or any of its members.

'(b) The exemptions specified in subsection (a) apply to—

'(1) pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

'(A) a purchasing group; or

'(B) any person who is a member of a purchasing group; and

'(2) the sale of—

'(A) pollution liability insurance, and comprehensive general liability coverage;

'(B) insurance related services; or

'(C) management services;

to a purchasing group or member of the group.

'(c) A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

'APPLICABILITY OF SECURITIES LAWS

'SEC. 405. (a) The ownership interests of members in a risk retention group shall be—

'(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

'(2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

'(b) A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

'(c) The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.' "

Mr. STAFFORD. Mr. President, I am pleased to offer an amendment with Senator BENTSEN to the pending legislation to reauthorize the Superfund Program that will facilitate the ability of companies engaged in the generation, treatment, disposal, and storage of hazardous substances and hazardous wastes to obtain pollution liability insurance coverage. I am pleased to have as a cosponsor of this amendment, as I said, the ranking minority member of the committee, the distinguished Senator from Texas [Mr. BENTSEN].

As testimony before the Committee on Environment and Public Works graphically demonstrated, pollution liability insurance is becoming increasingly difficult to obtain. This is posing difficulty for all companies, and particular difficulty for the many firms who must meet the insurance requirements of the Resource Conservation and Recovery Act as well as other firms who participate as contractors, architects, and engineers in the cleanup of Superfund sites. Many of the reasons for the unavailability of pollution liability insurance have nothing to do with the Superfund law. However, the unavailability of insurance is frustrating the goals not only of the Superfund law, but other environmental statutes as well. I urge the Senate to adopt this amendment because it will provide an alternative way through which companies may obtain pollution liability insurance.

Amendment No. 225 would authorize the creation of risk retention programs for insuring environmental impairment liability. The effect of this amendment would be to allow groups of individuals or firms to share liability for damages caused by pollution of the environment. If private insurance is available or the commercial insurance market revives, individuals would still be free to purchase that coverage, and many would undoubtedly choose to do so. But, if commercial insurance is not available, they would be able to band together to provide their own pollution liability insurance coverage.

The authority to establish pollution liability risk retention groups authorized by this amendment is virtually identical to the authority to insure product liability risks granted under the Product Liability Risk Retention Act of 1981, 15 U.S.C. 3901, et seq. So we are not proposing an entirely new insurance scheme under this amendment; rather we are extending the concept of group self-insurance to a new category of risk—pollution liability. Congress passed the Risk Retention Act of 1981 because at that time product liability insurance was unavailable, or was offered at prices which were not reasonable and affordable, particularly to small businesses. Today, we face a similar, if not more acute, problem with regard to the availability of commercial pollution liability insurance. Therefore, it seems to us that authorizing self-insurance programs for pollution liability risks represents a modest but important step to facilitate the ability of firms to insure these risks.

This amendment is not a panacea for all problems created by the lack of pollution liability insurance. It simply creates the authority for companies to establish group self-insurance programs. Thus, while this amendment does not provide any quick solution to the lack of commercial pollution liability insurance markets, it provides a mechanism under which companies can take steps to insure these risks.

This amendment establishes no Federal regulatory authority and requires no expenditure of Federal funds. It will have no effect upon the Federal deficit. While this amendment establishes no Federal regulatory authority to license insurance companies, it does not effect the liability insurance requirements established under the Resource Conservation and Recovery Act. Any person or firm which is required to obtain pollution liability insurance under that act will still be required to maintain pollution liability coverage in the amount specified under regulations issued pursuant to that act.

It is important to note that a pollution liability risk retention group is authorized to sell only pollution liability insurance and may offer that insurance only to its own members. It may not sell insurance to the public and it may not offer automobile, life or health insurance either to its own members or the public. Thus, the insurance authority granted under this amendment is limited to insuring the pollution liability risks of firms who join together to establish a risk retention group.

One other feature of the bill deserves mention. In addition to authorizing risk retention groups, the amendment also authorizes establishing pollution liability "purchasing groups." A purchasing group is a group of firms who join together to purchase pollution liability insurance on a group basis. If their experience, safety standards, or technology demonstrate that they are a preferred risk, the group may be able to obtain pollution liability insurance coverage on a favorable basis. The amendment provides that a pollution liability purchasing group is exempt from all regulations which prohibit or restrict the sale of insurance on a group basis.

Finally, it should be noted that pollution liability is defined in the amendment as "liability for injuries arising from the release of hazardous substances, pollutants or contaminants." We intend that this definition be broadly construed to cover all liability arising out of pollution or contamination of the environment. This amendment authorizes coverage for sudden and accidental, as well as gradual pollution claims.

Mr. BENTSEN. Mr. President, I have been advised that we have had an inquiry concerning this particular amendment and a possible objection to it by one of the Members.

Mr. President, I ask unanimous consent that it be laid aside at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STAFFORD. It would be the belief of the Senator from Vermont that the pending business in the Senate when we return to Superfund would be the amendment which I offered a few minutes ago with Senator BENTSEN.

The PRESIDING OFFICER. The Senator is correct.

Mr. STAFFORD. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

AMENDMENT NO. 634

(Purpose: To prohibit the use of lead pipes, lead solder, and lead flux in drinking water system)

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, I send an amendment to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY], for himself and Mr. LAUTENBERG, proposes an amendment numbered 634.

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new title:

TITLE III—LEAD FREE DRINKING WATER

SHORT TITLE

Sec. 301. This title may be cited as the "Lead Free Drinking Water Act".

SAFE DRINKING WATER ACT AMENDMENTS

Sec. 302. (a) In General.—Part B of Title XIX of the Public Health Service Act is amended by adding ats the end thereof the following new section:

"PROHIBITION ON USE OF LEAD PIPES, SOLDER, AND FLUX

Sec. 1417. (a) In General.—

"(1) Prohibition.—Any pipe, solder, or flux, which is used after the date of enactment of the SDWA of 1985, in the installation or repair of—

"(A) any public water system, or

"(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system,

must be lead free (as defined in subsection (d)). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.

"(2) Public notice of adverse effects.—Each community public water system shall provide notice, developed in consultation with the Administrator, to all users of the system with respect to—

"(A) the adverse health effects of exposure to lead, including a description of those populations which may be particularly sensitive to such exposure; and

"(B) any means reasonably available to such users for mitigating lead exposure from drinking water, taking into consideration the need to conserve water.

"(b) State Enforcement.—

"(1) Enforcement of prohibition.—The requirements of subsection (a)(1) shall apply to all States effective 24 months after the date of the enactment of this section. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

"(2) Enforcement of public notice requirements.—The requirements of subsection (a)(2) shall apply to all States effective 24 months after the date of the enactment of this section.

"(c) Penalties.—If the Administrator determines that a State is not enforcing the requirements of subsection (a) as required pursuant to subsection (b), the Administrator may commence a civil action under section 1414(b).

"(d) Definition of Lead Free.—For purposes of this section, 'lead free' means solders and flux containing not more than 0.2 percent lead, and pipes and pipe fittings containing not more than 6.0 percent lead.".

(b) Civil Action.—Section 1414(b) of the Public Health Service Act is amended—

(1) in the matter preceding paragraph (1), by inserting ", or with section 1417," after "or 1416"; and

(2) in paragraph (1), by inserting ", or under section 1417" after "subsection (a)".

(c) Notification to States.—The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act within 90 days after the date of the enactment of this Act.

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY

Sec. 303. (a) Prohibition.—(1) The Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

(2) For purposes of paragraph (1), "lead free" means solders and flux containing not more than 0.2 percent lead, and pipes and pipe fittings containing not more than 6.0 percent lead.

(b) Effective Date.—Subsection (a) shall become effective 24 months after the date of the enactment of this Act.

LEAD SOLDER AS A HAZARDOUS SUBSTANCE

Sec. 304. (a) In General.—Section 2(f)(1) of the Federal Hazardous Substances Act is amended by adding at the end thereof the following:

"(E) Any solder which has a lead content in excess of 0.2 percent.".

(b) Labeling.—Section 4 of the Federal Hazardous Substances Act is amended by adding at the end thereof the following:

"(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of such solder in the making of joints or fittings in any private or public potable water supply system is prohibited.".

"(c) Effective Date.—The amendments made by this section shall become effective 24 months after the date of the enactment of this Act.

Mr. BRADLEY. Mr. President, the amendment I send to the desk is on behalf of myself and my colleague from New Jersey, Mr. Lautenberg. The purpose of the amendment is to prevent further lead contamination of our Nation's drinking water.

Mr. President, we have long been aware that lead is a dangerous substance which seriously threatens public health. But we are only beginning to learn of the full health hazards associated with elevated lead levels in the blood. The risk of high blood pressure in adults, impairment of the central nervous system, retardation of learning ability in children, and birth defects all argue for prompt action to reduce the level of lead in our environment; and, that is precisely what this amendment will accomplish.

Most of the recent public attention has focused on the lead content in gasoline as a source of environmental contamination. I have spoken many times on the Senate floor on the most efficient manner in which to address this issue. But another source of lead merits our attention as well—that of lead in our drinking water. In fact, a 1983 EPA report entitled "The Health Hazards Associated With the Use of Lead To Transmit Drinking Water" clearly describes, a "correlation between high concentrations of lead in drinking water and high blood levels." The report goes on to state that lead ingested from water can be a significant source of lead in humans.

Therefore, Mr. President, we know that lead is a health hazard. We also know that if lead is in drinking water it will end up in our bloodstream. But how does it get into our water and what can we do to stop this? The EPA has concluded that lead enters drinking water primarily as a result of the corrosive action of water on pipes, fittings, and solder. Several factors come into play. Two of the most important being the age of the plumbing system and the corrosiveness of the water. The highest levels are found in new systems with corrosive water that is allowed to stand for several hours. For example, the first several draws of water in the morning would be most contaminated. However, levels in excess of the maximum contaminant level are not restricted to such circumstances.

How widespread is this problem? Mr. President, I first learned of this problem because in my home State of New Jersey we have confirmed cases of lead leaching into drinking water in Ocean County in amounts exceeding the EPA standard. However, it is important to note that this is truly a national problem. An informal survey performed by members of my staff revealed that 22 out of 29 States contacted have experienced difficulties with lead leaching into drinking water. The States not reporting any problems also admitted to not having performed extensive sampling. We questioned States from Maine to Texas to California. Leading the way in combating this problem are the States of Oregon, Wisconsin, Minnesota, New York, Massachusetts, and Delaware who have already banned the use of lead solder and pipes in potable water systems. The States of California and Virginia are considering similar legislation; and, I add, they have confidently predicted passage of such legislation. If EPA follows the recommendation of the National Academy of Sciences and reduces the level of lead acceptable in drinking water, as they are expected to do, the number of States which have contamination problems is sure to increase. In fact, the scope of this problem is international in nature with Denmark, West Germany, Great Britain, and the Netherlands all prohibiting the use of lead in drinking water systems.

Mr. President, now we return to the critical question, What can be done to rectify this problem? My amendment is a simple and effective vehicle for dealing with this problem. It attacks the issue from four vantage points, that of public water systems, private wells, new home construction, and plumbing repairs. First, it requires that States ban the use of lead solder and pipes in any new construction or repair of public water systems. Failure to implement such a ban could result in civil action by the Administrator against the State. Second, it prohibits the issuance of FHA mortgages to any newly constructed home which utilizes lead pipes or solder in its water delivery lines. Third, it mandates the Consumer Product Safety Commission to require a warning label on all packages of lead solder in order to protect unsuspecting homeowners who opt to perform some plumbing tasks on their own. Fourth, it requires that community public water systems carry out an information campaign to make people aware of the potential hazards associated with lead in drinking water and the steps being taken to avoid further problems.

Mr. President, alternatives to lead solder exist. They are distinguishable from lead solder; and are equally if not better able to provide an effective seal without adverse health consequences. Cost is not an issue since using alternate solders and pipes will result in a mere $10 increase in the price of a new home. This is a negligable amount when considering the health benefits to be gained. The logic is overwhelming to pursue the course of action I have outlined. Actually, there is no reason to retain lead as an acceptable material to be used in the transmission of potable water.

Mr. President, we place great emphasis, as a nation, on safe drinking water. In fact, we have recently passed legislation to amend the Safe Drinking Water Act which authorized $130 million for fiscal year 1986. Often, safe drinking water requires the use of expensive measures such as the addition of anti-corrosive chemicals or fancy purification methods. What I am proposing are simple, inexpensive, preventative steps we can take to avoid further contamination of our drinking water supplies. We are not asking anyone to rip up old plumbing systems. Rather, we focus on arresting the problem before it progresses further by limiting ourselves to new construction and repair. The choice is clear cut; do we take action, as a nation, to avoid further lead contamination or do we wait and run the risk of increased health hazards?

Mr. President, let me emphasize that three important questions were answered at hearings conducted by the Committee on Environment and Public Works on the Safe Drinking Water Act amendments and our Lead-Free Drinking Water Act. Is lead in drinking water a health hazard? Is lead contamination of drinking water widespread? What can be done to avoid the leaching of lead into drinking water? The witnesses were State public health officials, scientists, and engineering consultants. It is both accurate and fair to say that these witnesses spoke as one; each was against the use of lead pipes and lead solder in potable water systems. One witness went so far as to recommend a fivefold decrease in the EPA lead standard. Mr. President, as I have mentioned, we are virtually assured that EPA will continue to lower the drinking water lead standard. Again, this begs for us to act now to avoid future problems by eliminating sources of lead in drinking water.

Let me remind you, Mr. President, that often the biggest problems are encountered in new homes. These homes are usually owned by young couples with young children—children who are particularly susceptible to the adverse effects of lead. I hope my colleagues will join me in supporting this effort to protect our drinking water from further lead contamination.

Mr. President, that is the amendment. I thank the distinguished chairman of the committee for his interest. I know this was originally due to be offered several months ago and the Senator suggested that I pause, not offer it, and we would hold a hearing in the committee. A hearing was held. I think the bill has been improved as a result of that process.

Mr. LAUTENBERG. Mr. President, I am pleased to join my distinguished colleague from New Jersey, Senator BRADLEY, in offering this amendment to ban the future use of lead in water supply systems. This amendment is a revised version of our bill, S. 1197, and is intended to complement the Safe Drinking Water Act Amendments of 1985 approved in May by The Senate.

The Safe Drinking Water Act serves to protect the public against contaminants in drinking water. Our amendment seeks to assure that water cleansed of lead and other contaminants is not despoiled by lead while being transported to water taps.

Two and a half years ago, EPA determined that the largest source of lead in drinking water comes from the corrosion of pipes that carry water supplies. What this means is that no matter how much lead is taken out of drinking water by water supply companies, tap water will be contaminated as lead from lead pipes and lead solder connecting pipes is dissolved in drinking water on its way to the tap.

This problem may be exacerbated by acidified sources of drinking water. The low PH of the water—its acidity—makes the water more "aggressive" and thus more likely to corrode lead from pipes. New York, Minnesota and parts of eastern Canada already warn residents to run their water before using it, and advise pregnant women against its use altogether.

Numerous studies have demonstrated that infants and young children are especially susceptible to lead. Lead causes nervous disorders, learning disabilities, and weakens tolerance to disease. In addition, exposure to high levels of lead can cause cancer and birth defects.

It is clear that we must do everything possible to cut back on human exposure to lead, whether it is in drinking water, automobile exhausts or in paint and other products.

Our amendment is a positive step forward in accomplishing that goal. It prohibits the use of lead pipes, solder, and fluxes in repairs and installation of public drinking water systems. The amendment would require States to enforce the ban through State or local plumbing codes or other appropriate means. Any State which fails to implement the ban within 2 years will risk civil action by the EPA Administrator.

In addition, no new construction will be eligible for guaranteed or insured mortgages from the Veterans Administration or the Department of Housing and Urban Development unless the water system uses lead free piping, solder, and flux. Lead free is defined as materials containing not more than 0.2 percent lead.

The bill also requires that public water supply systems, in consultation with the EPA, conduct an information campaign to notify users of their systems of the adverse health effects of lead and the means by which users can reduce the lead in their water supplies. The bill further requires notification through the use of labeling on lead pipes or lead solder sold in retail establishments. The intent of these labels is to inform the public that the use of lead in drinking water systems is prohibited under Federal law. The consumer product safety commission will enforce this provision through its network of field inspectors.

Mr. President, this amendment does not call for the retroactive removal of lead pipes or pipes containing lead. It simply requires that new pipes or pipes that are repaired do not contain lead. It is supported by a number of organizations and associations concerned about lead regulation, including the National Association of Full Service Plumbing, Heating, Cooling and Piping Product Wholesalers, which has members whose businesses will be impacted by this amendment. However, it recognizes that there are alternatives to lead and those alternatives should be used.

Mr. President, in my home State of New Jersey, lead from solder in drinking water pipes has been identified as a major source of exposure to lead. In one study, exposure to lead in drinking water was greater than exposure to lead from automobile emissions along major highways. The preliminary findings of a report by the New Jersey Department of Environmental Protection indicate that the problem is extensive: of 590 wells tested in Beachwood, NJ, 220 showed lead above the 50 ug/l maximum contaminant level set under the Safe Drinking Water Act. This pattern is repeated in many other areas of the northeast and the northwest.

Action has been taken to ban lead solder in Oregon, Wisconsin, Washington, Delaware, and New York, as well as in Denmark, West Germany, Great Britain and the Netherlands. Given the national and international character of our economy, we should protect citizens across the country by adding the United States to the list.

Mr. President, the problem of lead contamination in our Nation's drinking water is not new, and it will not simply disappear. If anything, it will get worse. As time passes, deterioration of lead pipes will continue to pose a serious health problem. This subject deserves our immediate attention. It is my hope that the Senate will approve this important amendment.

Mr. STAFFORD. Mr. President, on behalf of the majority, and especially in view of what the Senator from New Jersey has said, and the hearings which the committee held in respect to this matter, we are prepared to accept the Senator's amendment.

Mr. BENTSEN. Mr. President, on behalf of the minority, I think the Senator from New Jersey offered a very excellent amendment, and I am pleased to support it.

Mr. BRADLEY. Mr. President, I move the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 634) was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

[From the Congressional Record, Sept. 18, 1985, pp. S11658-S11686]

ORDER OF PROCEDURE

SUPERFUND IMPROVEMENT ACT OF 1985

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. 51, Superfund, for a period not to extend beyond the hour of 2:30 today.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

IMMIGRATION REFORM AND CONTROL ACT OF 1985

Mr. STAFFORD. I further ask unanimous consent that at the hour of 2:30, the Senate resume consideration of S. 1200, the immigration bill, that there be 1 hour of debate on the Simon amendment sunsetting the Wilson agricultural provisions, that it be equally divided, and that no amendments be in order to the Simon amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Finally, Mr. President, I ask unanimous consent that following the conclusion or yielding back of time on the Simon amendment the Senate proceed to a vote in relation to the Simon amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DENTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Symms). Without objection, it is so ordered.

SUPERFUND IMPROVEMENT ACT OF 1985

The Senate resumed consideration of the bill, S. 51.

Pending: Amendment No. 633 by Mr. Stafford and Mr. Bentsen to provide an alternative way through which companies may obtain pollution liability insurance.

Mr. STAFFORD. Mr. President, it is the recollection of the Senator from Vermont that the last item of business in front of the Senate in connection with the so-called Superfund legislation yesterday was an amendment to the pending bill which had been offered by the Senator from Vermont for himself and the Senator from Texas [Mr. Bentsen], the ranking member of the committee.

The PRESIDING OFFICER (Mr. Cohen). The Senator is correct.

Mr. STAFFORD. My recollection is that that amendment had been stated and is the pending business.

The PRESIDING OFFICER. The Senator is correct.

Mr. STAFFORD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STAFFORD. It is the understanding of the Senator from Vermont that by unanimous consent he could, for Mr. Kasten and others, offer a second-degree amendment to the pending amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO 635

(Purpose: To clarify that the activities of pollution liability risk retention groups are limited to coverage of pollution liability risks)

Mr. STAFFORD. In that event, Mr. President, I send an amendment to the desk that I am offering for Mr. Kasten, Mr. Danforth, and Mr. Hollings as a second-degree amendment to the pending amendment. I ask unanimous consent that it be stated and that it be considered at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. Stafford] for Mr. Kasten, Mr. Danforth, and Mr. Hollings, proposes an amendment numbered 635 to amendment numbered 633.

Further amend by inserting "(c)" at the end of Section 402 and adding a new subsection as follows:

"(c) The authority to offer or to provide

insurance under this title shall be limited to coverage of pollution liability risks and this title does noit authorize a risk retention group or purchasing group to provide coverage of any other line of insurance."

Mr. STAFFORD. Mr. President, the amendment that has been offered by me for the Senator from Wisconsin [Mr. KASTEN] and others involves insurance matters traditionally within the jurisdiction of the Senate Commerce Committee. That is the reason why, in this instance, I have offered that amendment on behalf of Senator KASTEN and his colleagues.

● Mr. KASTEN. Mr. President, the amendment offered by the distinguished Senator from Vermont [Mr. STAFFORD] and cosponsored by the distinguished Senator from Texas [Mr. BENTSEN] authorizes the establishment of pollution liability risk retention groups. This amendment involves insurance matters traditionally within the jurisdiction of the Senate Commerce Committee. It utilizes the principles of the Product Liability Risk Retention Act, which I introduced with Senator PACKWOOD, and which was enacted into law in 1981, after being reported by the Commerce Committee.

As a consequence, I have reviewed this amendment, along with other members of the Commerce Committee, and I rise today to support this proposal, as well as to express the support of my colleagues, Senator DANFORTH, the chairman of the Commerce Committee, and Senator HOLLINGS, the ranking minority member of the committee. While recognizing this as a matter of Commerce Committee jurisdiction, we think this amendment makes sense. We recognize that pollution liability insurance is becoming increasingly difficult to obtain, and we think that utilization of the principles of the Product Liability Risk Retention Act is a sound approach to this problem.

However, during our review of this proposal, the concern was expressed to us that the authority granted under the amendment could be abused and that groups might attempt to offer automobile, life, or other lines of insurance not related to insuring pollution liability risks. Although we are sure that the sponsors of this amendment did not intend any such loophole, and we do not think the language of amendment No. 225 would permit offering other lines of insurande Senator DANFORTH, Senator HOLLINGS, and I would like to propose a perfecting amendment to avoid any ambiguity regarding the scope of the authority granted under this amendment.

This clarifying amendment simply provides:

> The authority to offer or to provide insurance under this title shall be limited to coverage of pollution liability risks and this title does not authorize a risk retention group or a purchasing group to provide coverage of any other line of insurance.

The purpose of this amendment is only to reenforce the intent of this proposal: that the activities of a pollution liability risk retention group are to be limited to coverage of pollution liability risks. This amendment will assure that this authority is not used to avoid State regulation of the sale of automobile, life, accident and health, or other lines of insurance to group members or to the public.●

Mr. STAFFORD. Mr. President, I am pleased to accept the clarifying amendment offered by the Senator from Wisconsin.

He is correct in stating that our intent regarding this amendment was to limit its authority to the coverage of pollution liability risks. I think the text and structure of the amendment already limits the authority of a pollution liability risk retention group to coverage of only pollution liability risks, but I am pleased to accept this clarifying amendment so that its scope is unambiguous. It is clearly not intended to authorize anyone to offer automobile, life, or health insurance to the public; it is limited solely to the coverage of pollution liability risks. The clarifying language will make its scope crystal clear.

Mr. President, for the majority, I am prepared to accept the Kasten amendment which I have offered to the amendment which Senator BENTSEN and I have proposed to the Senate.

Mr. BENTSEN. Mr. President, for the minority, I think the Senator's amendment is a good one. What it does in effect is help protect the jurisdiction of the Commerce Committee and limit the liability here to pollution liability risks. We have no objection to the amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

Mr. SYMMS. Mr. President, will the Senator yield for a question?

Mr. STAFFORD. Yes.

Mr. SYMMS. Does this amendment speak anything to the problem of what happens after the fact? In other words, let us say that somebody goes and takes over and cleans up a site. Then it passes specifications.

Mr. STAFFORD. Maybe I could explain briefly what the amendment does.

Mr. SYMMS. That would be great.

Mr. STAFFORD. What the amendment proposes to do, because it is getting to be so difficult for those who are engaged in the business of cleaning up dump sites to get insurance, is allow those who are engaged in dump site cleanup as contractors to coinsure themselves if they want to and if there are enough of them to band together to do that. It does not allow them to get into the business of insurance in any way or to go beyond their own operations. What it is designed to do is give them some protection against lawsuits against themselves by banding together in a group to coinsure each other.

Mr. SYMMS. It does not have any liability limitation?

Mr. STAFFORD. No, Mr. President.

Mr. SYMMS. That will be addressed in another amendment.

Mr. STAFFORD. That is true.

Mr. BENTSEN. Mr. President, all it does is allow banding together to insure in a business that cannot buy insurance.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 635) was agreed to.

Mr. STAFFORD. I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I know of no further desire on the part of Members to debate the main amendment (No. 633).

I am prepared to have the Chair put the main amendment before the Senate.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 633) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 636

(Purpose: To require a study of and report on the sources and extent of lead poisoning in children from environmental sources)

Mr. WEICKER. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 51.

Mr. WEICKER. Mr. President, I send an amendment to the desk and ask that it be immediately considered.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Connecticut [Mr. WEICKER] proposes an amendment numbered 636.

Mr. WEICKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

S. 51 is amended by adding on page 84, before line 15, a new subsection as follows:

"(f) The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1986, submit to the Committee on Environment and Public Works of the U.S. Senate and the Committee on Energy and Commerce of the U.S. House of Representatives, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information:

(1) An estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(2) An estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(3) A statement of the long term consequences for public health of unabated exposures to environmental sources of lead and including but not limited to, diminution in intelligence, increases in morbidity and mortality; and

(4) Methods and alternatives available for reducing exposures of children to environmental sources of lead.

Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking System of the National Priorities List.

The costs of preparing and submitting the report required by this section shall be borne by the Hazardous Substances Response Fund."

Mr. **WEICKER**. Mr. President, I rise today to offer this amendment to S. 51, the reauthorization of the Environmental Protection Agency's Superfund Program.

Lead poisoning of children has been recognized as a threat to the Nation's health for decades. Yet exposure to lead is still the most prevalent and preventable of childhood health problems. A survey conducted between 1976 and 1980 found that 675,000 children between the ages of 6 months and 5 years have concentrations of lead in their bodies in excess of toxic levels defined by the Centers for Diseases Control.

Scenes of comatose and physically impaired children poisoned by lead after eating paint chipped from the walls of inner-city housing has been replaced by a more insidious poisoning—that from long-term exposure to low levels of lead. This exposure exhibits no immediate symptoms but results in eventual mental impairment, loss of physical ability and the development of behavioral and emotional problems that endure for life.

Exposure to lead from gasoline and paint is being addressed. But residual exposure to environmental sources of lead continues and the health effects are considered devastating. Health authorities across the Nation have repeatedly seen the same children poisoned by lead from contaminated soil around the children's homes.

A single source of lead-contaminated soil in a playground or around a row house has been known to poison not only the same child repeatedly, but also successive generations of children who play or live within the contaminated area.

My staff has investigated and found dangerously high levels of lead in the soil throughout the city of Hartford, CT. A day care center's playground in Hartford was identified this summer with lead contaminated soil as a result of chipped paint accumulating in the soil. The city of Boston, MA, finds 200 to 400 lead poisoned children each year in the city. Up to 200 of these children were so badly poisoned they were hospitalized.

In one case, during the last 8 years, 14 children, residing as part of an extended family in a large house, have been poisoned by lead. The children, ranging in age from 1 to 3 years, have been hospitalized more than 2 weeks at a time for treatment of lead poisoning. Today, the family lives in a lead-free home but is surrounded by a yard polluted with lead. Thus, the health and the lives of the children remain threatened and hospital bills continues to mount.

Mr. President, the welfare of the Nation's children is a concern we all share. The continuing problem of childhood environmental lead poisoning should be an active component of the Nation's effort to clean the environment and insure the health of future generations of Americans. It is with these concerns that I ask the EPA to focus on this problem, beginning with a comprehensive report on the scope of the lead problem.

This amendment directs EPA and the Agency for Toxic Substances and Disease Registry to report to Congress the following information by March 1, 1986:

First, the number of children exposed to environmental sources of lead in high enough concentrations to cause adverse health effects;

Second, an estimate of the number of children exposed to lead according to the source of lead;

Third, a statement of the long-term consequences for public health of unabated exposures to environmental sources of lead which includes mental and physical impairments and death; and

Fourth, methods and alternatives for reducing the exposure of lead to children.

This report will be funded from within the existing hazardous substances response fund since its subject is so clearly under the authority of the EPA.

Mr. President, I want to thank my colleague from Vermont, Senator **STAFFORD**, my colleague from Texas, Senator **BENTSEN**, and the members of the Environment and Public Works Committee for their recognition of the continuing need to eliminate threats to the Nation's health from environmental pollution. I urge my colleagues to support this amendment.

Mr. **STAFFORD**. Mr. President, I support this amendment and find it an

important step in continuing to reduce the threat to the children of this Nation from lead poisoning. Such a report from EPA I believe will aid in controlling an important environmental hazard to this Nation's health. I urge its adoption and, for the majority, I am prepared to accept it.

Mr. BENTSEN. Mr. President, the Senator from Connecticut has a longstanding record in the health, education, and welfare of children. This is just one more example of that concern. I think it is helpful. I think the study is necessary so that we better understand the dimensions of the problem and what we can do to prevent it. I am delighted to support it.

Mr. WEICKER. Mr. President, I thank my colleagues.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Connecticut.

The amendment (No. 636) was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 637

(Purpose: To terminate taxes allocated to the Superfund at such time as $5,700,000,000 has been credited to the Superfund and to limit the amount which may be expended from the Superfund during any fiscal year)

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 637.

Mr. SYMMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 124, line 16, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 125, line 20, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 126, line 10, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 126, line 13, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 126, line 18, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 135, line 21, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 155, between lines 14 and 15, insert the following:

"(3) LIMITATION ON AMOUNTS EXPENDED DURING ANY FISCAL YEAR.—The amounts expended from the Superfund shall not exceed—

"(A) $600,000,000 during fiscal year 1986,

"(B) $900,000,000 during fiscal year 1987,

"(C) $1,200,000,000 during fiscal year 1988,

"(D) $1,500,000,000 during fiscal year 1989, and

"(E) $1,500,000,000 during fiscal year 1990.

Mr. SYMMS. Mr. President, this amendment is very simple. I have some comments I should like to make about the bill in general. However, first I would like to explain what the amendment does. It is an amendment I offered earlier in the Senate Finance Committee. It simply reduces the amount of money that will be spent in this legislation. I call it the 6-9-12-15 amendment. What is being proposed in the legislation before the Senate is that the EPA go from a $300 million program, which we now have in effect, instantaneously to a $1.5 billion program. I think the problem we face is very simple. If we in fact go to a $1.5 billion program, we should know whether or not we are going to spend the money effectively.

Mr. President, I support the idea and the effort of cleaning up hazardous waste sites, but I do not support going from a $300 million program to a $1.5 billion program in the first year. We have not yet established that we have answered some of the questions within this legislation.

Mr. President, without losing my right to the floor, I ask to withdraw the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, it was just brought to my attention by the distinguished chairman of the Committee on Environment and Public Works, the Senator from Vermont, that we are not going to discuss the Finance Committee's side of this, or amendments on that point, today, and we will discuss that later. But I should like to make some comments in general about the bill, if it suits the chairman.

Mr. STAFFORD. Mr. President, will the Senator yield?

Mr. SYMMS. I yield.

Mr. STAFFORD. First, I appreciate the Senator's understanding of the position in which I have found myself and his withdrawing the amendment for the time being. Certainly, this would be an appropriate time for general comments on the bill.

Mr. SYMMS. I thank the Senator very much. My apologies. I did not understand that we are under that agreement.

As to my amendment, I am happy to have my colleagues aware of it. I am just taking a very basic approach to say, with the amendment I have withdrawn, that if the Federal Government and the Congress of the United States deem that it is important to spend taxpayers' money to clean up toxic waste dumps—most of us support that general concept—that if we spent $300 million in fiscal year 1985, and if $600 million is enough to spend in 1986, and if $900 million is enough to spend in 1987, and if $1.2 billion is enough to spend in 1988, and if $1.5 billion is enough to spend in 1989, I think we will get more done in terms of cleanup if we ease our way into it rather than going in whole hog. This is the kind of thing that causes us a great deal of problems with the total Federal budget.

First of all, Mr. President, I think S. 51 makes too much money available, especially under the present circumstances. This is a time we need to reduce and hold the line on spending, and it does not make sense to have more money available than can be used prudently. By their own estimates, EPA cannot use effectively more than $1 billion per year. If that is what they think they can use effectively, they should not have more than that.

I propose a more modest funding schedule that would eventually end up where the committee has tried to get Congress. I am going to propose that we work our way up to $1.5 billion, and I hope that by that time we will have some of the bugs worked out on this so that it will not be such a terrible boondoggle and waste of money to the taxpayers of this country.

To date, the record indicates that Superfund has not been managed too well. It has cost $1.6 billion to clean up six sites—$1.6 billion to clean up six sites.

By attempting to bury our waste disposal problems under a blizzard of deficit dollars, we are guaranteeing waste, inefficiency, and probably corruption. Superfund is a classic pork barrel opportunity, and overfunding improves that opportunity.

I do not think we yet know the scope of the Superfund problem. EPA estimates that there are 22,000 sites, and GAO estimates 300,000 sites. I have not worked that out; but at the rate we have gone so far in cleaning up the first six sites for $1.6 billion, that sounds like a tremendous amount of money and a tremendous undertaking.

We do not have a satisfactory funding mechanism in place as yet. The current feedstock tax would probably eventually drive a significant share of our manufacturing capacity, and the jobs it provides, offshore. That is why the distinguished Senator from Texas and the distinguished Senator from Wyoming came up with the plan that is within this bill and which has raised a great deal of controversy. It has opposition from the administration. It has substantial opposition from other Members of the Senate, because people do not want to start a new kind of tax. All I am saying is that we do not have a satisfactory method in place as yet for funding.

The proposed new financing schemes leave something to be desired. They provide the opportunity for off-budget taxes which, if the experience of other countries is any indication, will become wealth-consuming monsters.

It is no secret that many people of a great deal of respect and credibility believe that the value added tax has been the driving force that has enabled Europeans to go Socialist, because of the power of the value added tax and its hidden nature.

The other problem I see in this legislation is that strict joint and several liability is not working.

Transaction costs exceed actual costs of cleanup work. For example, in the Conservation Chemical case, pretrial attorneys' fees have been estimated at $5 to $11 million and actual cleanup costs at $6 million.

I do not know whether that bothers my colleagues, but I assume that it does bother them. I know that it would bother the people in America if they focused on this Superfund question, to find out that 50 percent of the money to clean up hazardous waste sites is being spent to pay attorneys to litigate.

I am bothered by the fact that our Government collects for the cost of hazardous waste site cleanup solely on the basis of availability, without regard to actual contribution to the problem. Whatever happened to the idea of fairness?

In my own State of Idaho, the specter of liability for environmental problems caused long ago is hampering negotiations to reopen at least one mine that would produce an important strategic mineral. Reopening this mine would give us an assured domestic supply and put people to work in my State. The people who want to purchase the property will not do so unless they can be guaranteed that they are only responsible and liable for any future damage they might do to the environment. They do not want to take on the liability of what has happened in the past. I think that is an issue we will have to address before this legislation should pass the Senate.

I have been urged to offer an amendment to Superfund that would free a new purchaser from liability for hazardous wastes created by a predecessor. This, it seems to me, is a simple, straightforward, fair amendment. However, I have been told by colleagues around here who are more experienced than I am that there is no way that kind of amendment can be adopted. If we cannot adopt that, how do we think we are ever going to get to the bottom of this problem?

The insurance industry testified before the Committee on Environment and Public Works that they foresee liability from Superfund cleanup greater than the industry's assets. If the liabilities are greater than the industry's assets, I think those of us here have to limit that liability in some way. A compromise has to be worked out so that if people use prudent judgment—and the prudent man rule would apply—we could work out some agreement, so that a company could take the risk and engage in the effort to clean up toxic waste sites.

If people cannot insure it, how are the contractors going to be able to do the job? No responsible contractor will attempt a Superfund cleanup job without adequate insurance. They cannot take that kind of risk.

It seems to me that Superfund cleanup is going to be stalled until the insurance issued is resolved. So until we resolve the insurance issued, why should we try to raise and spend $1.5 billion a year, if it is going to be tied up in litigation and attorneys' fees?

I do not think the duty of the U.S. Senate or the U.S. Congress in general is to provide some kind of giant fund to pay attorneys to sue each other, to provide the Lawyers' Relief Act.

The provision for victims' compensation is another open-ended invitation to litigation. While the present law provides wonderful opportunities for litigation and waste, it really does not provide much incentive for effective cleanup of our hazardous waste sites.

This thing is a lawyer's dream as it is now, with the $300 million. Give them $1.5 billion and do not answer the liability question, and I think it is an open invitation. In fact, I say to my colleagues that the attorneys were salivating in the Public Works Committee at the thought that we might pass this. The room was jammed with people thinking about the new accounts they would have and how much money they would be able to make with litigation from this $1.5 billion fund. We would be paying half of that to lawyers to sue each other.

I am afraid that in the present form Superfund should not be called Superfund. We probably should call it the lawyers slush fund. We need to clean up our environment, and I agree with that, including hazardous waste sites. First we need to clean up the Superfund legislation and get this in the situation where we can actually take the taxpayers' money, take the money, whether we settle on the current proposal of the small, very, very broad-based tax, whether we settle on that, or whether we make some amendment that is satisfactory with the administration or satisfactory with the other Members of the body.

I do not have the answer to that right now, but I am saying that before this is over we have to solve some of those questions or those people who believe that somehow we are going to get much done with respect to the cleaning up of toxic waste dumps are going to be sadly disappointed because there are too many roadblocks here, and this provides the mechanism for an awful lot of lawsuits and for tremendous litigation expenses to the public and very little will be done toward actually cleaning up the waste sites that some of my colleagues are so concerned about and there is so much interest in taking care of.

Mr. President, I yield the floor.

Mr. STAFFORD. Mr. President, it is the understanding of the Senator from Vermont that we will have until 2:30 p.m. to proceed on amendments affecting S. 51, the Superfund bill.

I believe that the able Senator from New Jersey [Mr. LAUTENBERG] has an amendment, and we would like to dispose of that if we can by 2:30 p.m. and if time allows also an amendment by Mr. BAUCUS of Montana.

AMENDMENT NO. 638

(Purpose: To improve Community Emergency Preparedness and Response)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. MATTINGLY). The amendment will be stated.

The bill clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] for himself, Mr. HUMPHREY, Mr. HEINZ, Mr. MOYNIHAN, and Mr. BRADLEY, proposes an amendment numbered 638.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 87, after line 16, insert the following and renumber succeeding sections accordingly:

SEC. . Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(d) EMERGENCY PLANNING.—(1)(A) The President shall publish a list of extremely hazardous substances, taking into account the toxicity, reactivity, volatility, flammability, and usage of such substances. For the purposes of the preceding sentence, the term "toxicity" shall include any acute or chronic health effect which may result from an acute exposure to the substance. The President shall review, and modify as necessary, such list not less often than every two years. Such list shall identify each extremely hazardous substance and shall establish a quantity of each such substance which, if released at a facility, would likely pose an imminent and substantial endangerment to the public health or to the environment. Facilities that have present such a quantity of such a substance shall notify the Governor in accordance with paragraph (2)(A).

"(B) Within 30 days after enactment of the Superfund Improvement Act of 1985, the President shall publish an initial list of substances and quantities as described in subparagraph (A), which shall be the same as substances and quantities listed by the Council of the European Communities in its "Council Directive of June 24, 1982, on the Major Accident Hazards of Certain Industrial Activities, Annex III", published in the Official Journal of the European Communities, August 5, 1982.

"(2)(A) Not later than 90 days after the date of enactment of the Superfund Improvement Act of 1985, or not later than 60 days after any revision of the list, each owner or operator of a facility (other than motor vehicles, rolling stock, or aircraft) that has present a quantity of a substance that requires notification under paragraph (1) shall notify the Governor of the State in which such facility is located that such facility is subject to the requirements of this subsection. The Governor may designate additional facilities that shall be subject to the provisions of this subsection.

"(B) Not later than 180 days after the date of enactment of the Superfund Improvement Act of 1985, the Governor of each State shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the Governor may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the Governors of each potentially affected State may designate emergency planning districts and emergency planning committees by agreement. Im making such designation, the Governor shall indicate which facilities designated under subparagraph (A) are within such emergency planning district.

"(C) Not later than 210 days after such date of enactment, the Governor shall appoint members of an emergency planning committee for each emergency planning district. Each Committee shall include representatives of the public, appropriate State and local organizations, and owners and operators of facilities designated under subparagraph (A). In making such appointments, the Governor shall consider persons who would be expected to play a major role in the event of a release of an extremely hazardous substance, such as elected officials, law enforcement and firefighting personnel, public health, medical, hospital, and environmental protection personnel, civil defense personnel, transportation officials, and representitives of broadcast and print media. Interested persons may petition the Governor to modify the membership of such committee. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function.

Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan.

"(D) Each emergency planning committee shall complete preparation of emergency plans in accordance with the subsection not later than two years after such date of enactment. The committee shall review such plan at least annually, or as changed circumstances in the community or at any facility may require.

"(E) Each emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required, and the means for providing such additional resources.

"(F) Each emergency plan shall include (but is not limited to)—

"(i) identification of facilities designated pursuant to subparagraph (A) that are within the emergency planning district, and identification of routes likely to be used for the transportation of substances listed pursuant to subparagraph (A);

"(ii) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances;

"(iii) designation of a community emergency coordinator and a facility emergency coordinator, who shall make determinations necessary to implement the plan;

"(iv) procedures providing reliable, effective, and timely notification by the facility emergency coordinator and the community emergency coordinator to persons designated in the emegency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements under section 103 (j).;

"(v) methods for determining the occurrence of a release, and the area or population likely to be affected by such release;

"(vi) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

"(vii) training programs, including schedules for training of local emergency response and medical personnel; and

"(viii) methods and schedules for exercising such plan.

"(G) The owner or operator of each facility designated pursuant to subparagraph (A) shall—

"(i) within 210 days after such date of enactment, notify the emergency planning committee for the emergency planning district in which such facility is located that a facility representative will participate in the emergency planning process;

"(ii) promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur; and

"(iii) upon request from the emergency planning committee, promptly provide information to such committee necessary for developing and implementing the emergency plan.

"(H) The National Response Team shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than 150 days after such date of enactment.

"(I) The Regional Response Teams shall review and comment upon such emergency plans or other issues related to preparation, implementation, or exercise of such plan upon request of the emergency planning committee. Such review shall not delay implementation of such plans.

"(3) The President may order a facility owner or operator to comply with paragraph (2)(A) and (G) of this subsection. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.".

On page 58, after line 20, insert the following and renumber succeeding sections accordingly:

Sec. (a) Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting the following new subsections:

(i) Material Safety Data Sheets and Emergency Inventory.—(1) Each owner or operator of a facility at which a hazardous chemical is produced, used, or stored shall file a Material Safety Data Sheet and Emergency Inventory form, as published under paragraph (3) of this subsection, not later than 180 days after enactment of the Superfund Improvement Act of 1985 for such hazardous chemical with the emergency planning committee established under section 105(d), for the area in which such facility is located and the Governor of the State in which the facility is located. In addition, the Emergency Inventory form shall be filed with the Environmental Protection Agency. If no emergency planning committee exists for the area in which a facility is located, the Governor of the State in which the facility is located shall designate appropriate area officials to receive the Material Safety Data Sheet and Emergency Inventory form. The Governor of the State in which a facility is located shall notify owners and operators of facilities required to comply with the provisions of this subsection.

"(2) Whenever a Material Safety Data Sheet is revised (as required under regulations under the Occupational Safety and Health Act of 1970) each such facility owner or operator shall file, as promptly as practicable, but not later than 90 days after such revision, the revised material safety data sheet. On an annual basis, or whenever a significant change occurs in the amount or presence of the hazardous chemical located at the facility, such owner or operator shall file a new Emergency Inventory form with the recipients designated in paragraph (1).

"(3) The President shall publish the Emergency Inventory form in the Federal Register within 90 days of the enactment of the Superfund Improvement Act of 1985. The Emergency Inventory Form shall provide for an estimate of the maximum amounts of the hazardous chemical present at the facility at any time during the preceding calendar year (in ranges), a brief description of the use or storage of the hazardous chemical at such facility, and the location of the hazardous chemical at such facility.

"(4) The Material Safety Data Sheets and Emergency Inventory forms shall be made available by the emergency planning committee to the public upon request. If no emergency planning committee exists for the area in which the facility is located, the Material Safety Data Sheets and Emergency Inventory forms shall be made available to the public by the Governor of the State in which the facility is located upon request.

"(5) Nothing in this subsection shall be construed to limit the ability of any State or locality to require submission or distribution of information related to hazardous substances.

"(6) The President may establish quantities for hazardous chemicals below which no facility at which a hazardous chemical is produced, used, or stored shall be subject to the provisions of this subsection.

"(7) The President may order a facility owner or operator to comply with this subsection. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

"(j) EMERGENCY NOTIFICATION.—(1) The owner or operator of any facility at which a release occurs in an amount requiring a report under subsection (a) shall immediately provide notice of such release to the community emergency coordinator for the emergency planning committees, established pursuant to subsection 105(d), for any area likely to be affected by the release and to the Governor of any State likely to be affected by the release. If an emergency plan prepared pursuant to section 105(d) does not exist, an operator shall instead provide notice to the emergency response authority of the affected jurisdictions.

"(2) Notice under paragraph (1) shall include (to the extent known at the time of the notice)—

"(A) the chemical name or identity of any hazardous substance involved in the release;

"(B) an estimate of the quantity of any such hazardous substance that was released into the environment;

"(C) the time and duration of the release;

"(D) the medium or media into which the release occurred;

"(E) the nature of the health or safety hazard posed by any substance released to the population as a whole and to sensitive populations, and the likely symptoms of exposure at different levels and types of exposure (unless such information is readily available to the emergency coordinator pursuant to the emergency plan);

"(F) proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the emergency coordinator pursuant to the emergency plan); and

"(G) the name and telephone number of the person or persons to be contacted for further information.

"(3) As soon as practicable after a release to which this subsection applies, such owner or operator shall provide a follow-up notice (or notices, as more information becomes available) updating the information required under paragraph (2), and including additional information with respect to—

"(A) actions taken to respond to and contain the release;

"(B) any known or anticipated acute or chronic health risks associated with the release, and

"(C) where appropriate, advice regarding medical attention necessary for exposed individuals.".

(b) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding at the end thereof the following new paragraphs:

"(35) 'hazardous chemical' means, for purposes of section 103(i), any substance which is treated as a 'hazardous chemical' pursuant to the Occupational Safety and Health Administration's hazard communication standard (codified in July 1985 in 29 CFR 1910.1200), except that the following substances shall not be treated as a 'hazardous chemical' for such purposes:

"(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

"(B) any manufactured item that contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical under normal conditions of use;

"(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

"(D) any substance to the extent it is used in a laboratory, hospital, or medical facility under the direct supervision of a technically qualified individual;

"(E) any substance to the extent it is used in routine agricultural operations; and;

"(F) any substance to the extent it is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968:

"(36) 'Material Safety Data Sheet' means a material safety data sheet developed for a hazardous chemical pursuant to the hazard communication regulations promulgated under the Occupational Safety and Health Act of 1970 (codified in July 1985 at 29 CFR 1910.1200).".

Mr. LAUTENBERG. Mr. President, I am offering this amendment on behalf of myself, and Senators MOYNIHAN, HUMPHREY, HEINZ, and BRADLEY. The amendment is designed to improve community emergency planning around facilities handling hazardous chemicals. The amendment is modeled on S. 1531, the Community Emergency Preparedness and Response Act of 1985, which I introduced on July 30.

Mr. President, our amendment builds upon the emergency response provisions in Superfund. It provides a framework for improving and integrating facility and community planning and emergency response efforts, establishing training programs for emergency response officials, and for educating the public about what to do in the event of a toxic release into the environment. The amendment recognizes that the responsiblility for emergency preparedness and response planning and implementation rests with the States and affected localities, but provides Federal technical assistance when appropriate.

The amendment stems from a hearing held by the Senate Environment and Public Works Committee in February, 1985 in the wake of the tragedy in Bhopal, India, and a number of serious releases in this country. Testimony before the committee, from firemen, State and local emergency response personnel, Federal officials and industry representatives confirmed the need to improve local notification, planning and response capabilities for dealing with releases of hazardous substances that are dangerous to the public and environment.

Mr. President, 1 year ago, Bhopal, India was unknown. Now it is a name and a place known to people all over the world. It is a name that strikes terror in the hearts of millions who live or work near a chemical plant.

Since the Bhopal incident, there have been a series of less serious, but significant, releases in the United States that suggest that we are far from immune from such dangers. Clearly, we must take every step to prevent such occurrences. But, in the event of a chemical release, we should be better prepared to respond.

Hundreds of the victims in Bhopal could have been spared their lives or injuries if they had known of the hazard around them and known how to respond. Many more lives could have been saved it a communication system had been in place to alert residents of Bhopal about the release. That is true of chemical releases in our country as well.

Our amendment is designed to improve our ability to respond to these incidents. To improve local emergency preparedness planning, the bill requires that the Environmental Protection Agency prepared a list of extremely hazardous substances.

The foundation of this list will be the "Seveso list" developed by the European Economic Community as part of its directive on major accident hazards. The directive was approved by EEC members in 1982, following a major dioxin accident in Seveso, Italy.

Facilities which handle substances on this list of specified amounts would be required to participate in community emergency response planning. The Seveso list is considered to be an initial list for purposes of emergency planning, and can be modified by EPA, to add or delete substances.

Shortly after the Seveso list is published in the Federal Register and facilities have notified the Governors in the States in which they are located, Governors are to designate planning districts within their States for areas likely to be affected by releases from such facilities and appoint local emergency planning committees to prepare emergency response plans and establish or improve training programs for local emergency response and medical personnel.

The Federal role is primarily technical; in developing the list of extremely hazardous substances and providing guidance and technical assistance to emergency planning committees, and review and comment on local emergency response plans upon request.

In addition, the amendment would require immediate notification upon the release of a reportable quantity under Superfund. Facilities experiencing such a release would be required to notify the National Response Center, as provided under current law, but also would have to notify the appropriate emergency planning committees, their Governor, and in the absence of planning committees, State and local emergency response officials.

Unlike EPA's existing notification regulations, notification must be immediate. This notification shall be accompanied by specific information pertaining to the substances released and appropriate response measures. Follow up notification of actions taken to respond to and contain a release would be required as soon as practicable after the release.

This notification requirement simply expands upon a provision I authored in S. 51. The SE requirements are expected to provide a means for the local planning committees, the Governor, and the National Response Center to track facilities that may have a record of releases, and should serve as an aid in designating additional facilities to participate in community emergency planning. These notification requirements are effective immediately upon enactment of the Superfund Improvement Act of 1985.

Finally, Mr. President, the facilities that handle substances covered by OSHA's hazard communication standard would be required to submit the material safety data sheets required under that standard, and an annual estimate of their inventories of the substances covered by the OSHA standard, and location, and basic uses and storage information about such substances, to local emergency planning committees, the State, and EPA, which shall make this information available to the public.

This provision will make information about hazardous substances present in a community available to emergency response personnel and the public through the MSDS and emergency inventory. This provision is vital to our first responders—the firefighters, police, and emergency personnel—who must put their lives on the line to respond to chemical emergencies.

Mr. President, there are a number of additional points that I would like to make for purposes of legislative history. This amendment provides no specific authorization from the Superfund for expenditures related to carrying out its provisions. However, it is expected that funding for emergency response and training will continue to come from the fund, and be sufficient to support the additional activities of the national response teams and regional response teams under this provision.

The amendment is structured to allow existing planning areas and plans to be incorporated into the district and committee planning process. To the extent that a State or a locality has an effective plan, the committees and communities can use this plan.

The substances covered by the material safety data sheet and emergency inventory requirements in the community right-to-know provisions of the amendment are more numerous than the substances on the Seveso list. The reason for this is straight forward. What our workers are entitled to know in handling hazardous substances, our firefighters should know. They are essentially workers who work under the worst conditions—fires, spills, and other releases involving hazardous chemicals and other materials. The list of extremely hazardous substances, on the other hand, which trigger facilities for emergency planning, can be shorter and more focused on the risks to the larger community.

The Seveso list was chosen as an appropriate starting point for triggering emergency planning because of its widespread acceptance as a list of substances that pose an extreme threat to the public and environment. In a report from the Congressional Research Service, the Seveso list is described as a list "composed of chemicals generally recognized as being of significance in the event of an uncontrolled or sudden release. Experts from several countries generated and agreed to the list. The chemicals are not restricted to those of acute toxicity, but include many of those of possible long-term toxicity, e.g. dioxin. Finally, the experts collectively decided upon quantities of concern for each chemical." I request that the remainder of the report from the CRS and the accompanying Seveso directive be printed in the Record at the conclusion of my remarks.

Mr. President, I shall request that additional material be printed in the Record at the conclusion of my remarks.

In crafting the amendment, it was brought to our attention that biannual exercise of plans keeps a community prepared and attentive to changes in the community and turnover among emergency response personnel. While we did not believe it was appropriate to dictate how often different communities should practice their plans, the emphasis should be upon keeping these plans, people plans and not paper plans, which requires practice and continual public education.

The role of the community is critical in the planning process. The amendment provides that the public be represented on the planning committees, be given opportunity to participate in meetings on the plan, and have opportunity for comment. The committees are expected to play an active role in reaching out and bringing the public into the process.

In an Environment and Public Works Committee field hearing in Newark, NJ this winter, several residents of the industrial area of Linden expressed surprise about emergency response procedures in the city. They were unsure where to go, whom to call, and what to do in the event of a chemical release. It is imperative that residents learn of hazards in their midst and be able to respond in the case of a mishap.

Mr. President, I ask unanimous consent that the following material be printed in the RECORD: The New Jersey emergency services form for consideration in developing the "right-to-know" provisions of the amendment are an important element in this process. These provisions provide for distribution of material safety data sheets and emergency inventory forms to the planning committees and the State EPA is to receive the emergency inventory. The information submitted is to be made available to the public by the planning committee or State uniform emergency inventory form, also the excellent series by Stuart Diamond of the New York Times on the tragedy in Bhopal. The New York Times series provides a persuasive argument that releases of hazardous substances are widespread, and that the elements that lead up to catastrophic release and failed response are common to the manufacture and use of these substances throughout the world.

Today we recognize that we cannot afford to play Russian roulette with hazardous chemicals, and bank on being able to respond without coordinated emergency response efforts. The Environment and Public Works Committee has already taken steps to respond to emergency planning and response needs. The amendments in S. 51 improve notification requirements under Superfund and stiffen penalties for noncompliance.

Mr. President, this amendment complements those provisions.

This amendment is supported by our firefighters, labor, public health, environmental, religious, and consumer groups. These include the 170,000 members of the International Association of Firefighters, the National Lung Association, AFSCME, the AFL-CIO, the U.S. Conference of Mayors, and a large coalition of environmental groups. This morning, the International Association of Fire Chiefs passed a unanimous resolution on behalf of their 9,000 members which is consistent with this amendment.

Mr. President, I ask unanimous consent that a letter written on behalf of this amendment by this coalition, a letter by Mr. Ed Hennessy, chairman of the Allied Corp., one of New Jersey's largest companies and the fire chiefs' resolution, be printed in the RECORD, along with other materials at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LAUTENBERG. Mr. President, I understand that this amendment is acceptable to the managers of the bill. I urge my colleagues to adopt this amendment.

EXHIBIT 1

FIREFIGHTING, LABOR, HEALTH, ENVIRONMENTAL, AGRICULTURAL, RELIGIOUS, CITIZEN AND CONSUMER ORGANIZATIONS STRONGLY SUPPORT SUPERFUND HAZARDOUS SUBSTANCE INVENTORY AND EMERGENCY PREPAREDNESS AND RESPONSE PROVISIONS

DEAR SENATOR: On December 3, 1984, more than 2,000 citizens were killed and 200,000 injured in Bhopal, India, when the toxic cloud of methyl isocyanate from a Union Carbide manufacturing facility spread over the sleeping city. Following the Bhopal tragedy, the worst industrial accident in history, the American public asked, "Could it happen here?"

Today, we know it can. According to the Congressional Research Service, approximately 75 percent of all Americans live in the vicinity of facilities which handle, treat, or store hazardous chemicals. Recent chemical releases in this country, especially in the release on August 11 from another Union Carbide facility in Institute, West Virginia, have underscored the lack of adequate public information about hazardous substances and the health hazards associated with exposure to them. In addition, life-threatening inadequacies in emergency response capabilities also have become apparent.

In response to these chemical disasters, the Senate Environment and Public Works Committee incorporated a provision establishing a Hazardous Substances Inventory in S. 51, the Superfund Improvement Act of 1985.

The Hazardous Substances Inventory would provide information about chemical use, storage, and releases into the air and environment from facilities handling hazardous substances. Covered facilities also would attach Material Safety Data Sheets, required by the OSHA Hazard Communication Standard, to the inventory form in order to provide information about the health hazards and safe handling of these substances.

The inventory is to be used by local, state, and federal agencies to improve toxic chemical management by monitoring location and use, as well as tracking regular environmental releases of these substances. It is to be made widely available to the public, including emergency response officials, who sorely need this information to plan for and respond to toxic chemical releases.

In addition, in late July, Senators Lautenberg, Moynihan, and Humphrey introduced S. 1531, the Community Emergency Preparedness and Response Act of 1985. They intend to offer an amendment similar to S. 1531 when the full Senate takes up the Superfund reauthorization this fall. This legislation builds upon the emergency response provisions of Superfund by providing a framework for improved community preparedness and notification around facilities that handle hazardous substances.

S. 1531 mandates that a priority list of hazardous substances be developed by the Environmental Protection Agency and that designated facilities, which store, handle or manufacture these substances, participate in emergency response planning. The Governors of each state are responsible for designating planning districts in areas where releases from such facilities might endanger public health of the environment. Local emergency planning committees subsequently would be established to prepare emergency response plans and ensure that local emergency response personnel are trained to carry out the plans successfully. This legislation provides federal technical assistance where appropriate, but relies upon the states and localities to take primary responsibility for developing plans for protecting their citizens.

The undersigned firefighting, labor, health, environmental, agricultural, religious, citizens, and consumer organizations strongly support the Hazardous Substance Inventory in S. 51, and the emergency preparedness amendment to be offered when the full Senate takes up S. 51. The events of recent months have illustrated dramatically the need for strengthening the information requirements and emergency response capabilities under Superfund. The adoption of these provisions could literally mean the difference between life and death for the citizens of this country and for those who must respond to chemical releases.

We urge you to support these important provisions when S. 51 is brought to the Senate floor.

Sincerely,

Mike Kerr, American Federation of State, County and Municipal Employees; Richard Duffy, International Association of Firefighters; Fran Dumelle, American Lung Association; Greg Humphrey, American Federation of Teachers; Mary Lou Licwinko, Association of Schools of Public Health; Len Simon, U.S. Conference of Mayors.

Julia A. Holmes, League of Women Voters; Linda Tarr-Whelan, National Education Association; Lori Rogovin, American Association of University Women; Janet Hathaway, Public Citizen's Congress Watch; Diane VanDe Hie, National Association of Local Governments on Hazardous Waste; Robert Alpern, Washington Office, Unitarian Universalist Association of Congregations in North America; Allen Spalt, Rural Advancement Fund; Haviland C. Houston, General Board of Church and Society, United Methodist Church; Rick Hind, U.S. PIRG; Eric Jansson, National Network to Prevent Birth Defects.

Linda Golodner, National Consumers League; David Mallino Industrial Union Department, AFL-CIO; Jeff Tryens, Conference on Alternative State and Local Policies; Gene Kimmelman, Consumer Federation of America; Leslie Dach, National Audubon Society; Jay Feldman, National Coalition Against the Misuse of Pesticides; Shirley Briggs, Rachel Carson Council; Charles Lee, United Church of Christ Commission for Racial Justice: Bill Klinefelter, United Steel Workers of America; Victoria Leonard, National Women's Health Network.

Ken Kamlett, National Wildlife Federation; Martha Broad, Natural Resources Defense Council; Anthony Guarisco, International Alliance of Atomic Veterans; Geoff Webb, Friends of the Earth; John O'Connor, National Campaign Against Toxic Hazards; Norman Solomon, Fellowship of Reconciliation; Ann F. Lewis, Americans for Democratic Action; Cathy Hurwit, Citizens Action; Blaise Lupo, Clergy and Laity Concerned.

Fred Millar, Environmental Policy Institute; Scott Martin, League of Conservation Voters; Joseph R. Hacala, S.J., Jesuit Social Ministries, National Office; Kathleen Tucker, Health and Energy Institute; David Zwick, Clean Water Action Project; Dan Becker, Environmental Action; Sally Timmel, Church Women United; Ralph Watkins, Church of the Brethren.

Resolution

Whereas: The IAFC recognizes the need that emergency service personnel have a right-to-know the known or potentially hazardous and toxic materials to be encountered in response to emergency incidents, and

Whereas: The IAFC recognizes the need for industry handling known or suspected hazardous or toxic materials to make a positive effort to assist and support fire departments with training and education programs for fire and rescue personnel responding to incidents involving their products, and

Whereas: The IAFC recognizes that potential or ~~known~~ hazardous chemicals can lead to health hazards, ~~and~~ should be regulated, and

Whereas: The IAFC recognizes that even small amounts of potential or known hazardous chemicals can lead to health hazards, and

Whereas: The IAFC recognizes that hazardous or toxic substances which may present acute and/or chronic adverse health hazards to fire and rescue personnel must be identified and reported, and

Whereas: The failure of the Federal Hazardous Communication Law to adequately address this subject has caused many of our states and localities to adopt stringent right-to-know legislation.

Therefore be it Resolved: That the IAFC supports the enactment of Federal fire service right-to-know legislation in order to establish a more uniform means of planning and/or responding to emergencies dealing with potential releases of hazardous substances which, may present an imminent or substantial danger to fire and rescue personnel, and be it further

Resolved: That the IAFC supports Federal legislation that recognizes the need for the fire department to have concise, relevant, manageable information that will be of practical use by emergency response agencies, and be it further

Resolved: That industry, including users and suppliers provide a regularly updated inventory to allow for adequate preplan for emergency responses, and be it further

Resolved: That any Federal legislation will establish minimum standards and that no state or local government shall be prohibited from the enactment of more stringent right-to-know legislation, and be it further

Resolved: That any and all right-to-know legislation shall cover at least those hazards and toxic substances which are now regulated and defined under OSHA's hazardous communication standards, and be it further

Resolved: That this Resolution will provide guidance to the IAFC Board of Directors.

Allied Corp.,
Morristown, NJ, September 12, 1985.
Hon. Frank R. Lautenberg,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Dear Frank: I appreciate the opportunity Allied representatives had to share their experience and comments with your staff as the Community Emergency Preparedness and Response Act, S. 1531, was being drafted.

Allied supports the enactment of S. 1531. It is consistent with our long-standing endorsement of the concept of making community officials and residents aware of potentially dangerous materials in nearby facilities and having in place carefully devised procedures to be followed in the event of an emergency

Those provisions complement the "hazardous materials inventory" requirement which you added to S. 51 in the Environment and Public Works Committee. We hope you will modify that provision so that, as in S. 1531, it is targeted to facilities handling extremely hazardous substances. Finally we urge that the language make it clear that estimates can be used to satisfy emissions reporting requirements when exact data are unavailable.

We look forward to working further with you and your staff on this important legislation.

With best wishes,

Sincerely,

Edward L. Hennessy, Jr.,
Chairman of the Board.

Congressional Research Service,
The Library of Congress,
Washington, DC, July 30, 1985.

To: Senate Committee on Environment and Public Works, Attention: Liz Barratt-Brown.

From: Michael M. Simpson, Analyst in Life Sciences, Science Policy Research Division.

Subject: A list of chemicals of concern.

Based upon our previous conversations, my understanding is that you are interested in a preliminary list of chemicals generally recognized as being of significance in the event of an uncontrolled and sudden release. It is understood that, as with many specific components of proposed legislation, this list would not be construed as final and unchangeable, but would serve as the starting point for discussion. While any components of a list (by being either on or off it) could engender debate, the chemicals on this list would be limited to those which are generally recognized by experts and bodies of experts as significant in the event of an uncontrolled and sudden release. Finally, because generally there is more uncertainty and controversy associated with the specification of chemicals of long-term toxicity (e.g., are carcinogenic, mutagenic, or teratogenic), the list would be composed mostly of chemicals of acute toxicity.

There are millions of known chemicals, and tens of thousands in commerce. Further, as pointed out in the National Academy of Sciences' (NAS) report of 1984, Toxicity Testing—Strategies to Determine Needs and Priorities, there are large gaps of knowledge about the health effects of most of these chemicals. Finally, the assigned time constraint and finite research resources of the Cogressional Research Service necessarily would have resulted in a limited invetigation.

Both the National Institute for Occupational Saftey and Health, and the American Chemical Society, maintain extensive computerized data bases of chemicals and their observed health effects. These organizations can be contacted to provide a list of chemicals of specified toxicity. An extensive search with scores of specified toxicities would probably require a significant allocation of time and other resources. Specifying the toxicities could be controversial. And the health effects data gaps noted by the NAS would prevent the list from being complete and final.

Rather than attempt to generate a list of specific chemicals of specified toxicities, my approach was to review lists of chemicals of concern compiled by experts and bodies of experts. There are several of such lists, including that compiled by the United Nations Environment Program, and by the Office of Environmental and Scientific Affairs of the World Bank. Following a review of several of these lists, the enclosed list was selected as being most suited to your perceived needs.

The enclosed Council of the European Communities list is composed of chemicals generally recognized as being of significance in the event of an uncontrolled and sudden release. Experts from several countries generated and agreed to the list. The chemicals are not restricted to those of acute toxicity, but include many of those of possible long-term toxicity, e.g., dioxin. Finally, the experts collectively decided upon quantities of concern for each chemical.

I trust this information will be useful to you in starting and focusing discussion about legislation to prevent injuries and damage from chemical accidents. Please call me at 287-7010 when I can be of further assistance.

Council Directive on Major Accident Hazards of Certain Industrial Activities

The Council of the European Communities:

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission,[1]

Having regard to the opinion of the European Parliament,[2]

Having regard to the opinion of the Economic and Social Committee,[3]

Whereas the objectives and principles of the Community environment policy were fixed by the action programmes of the European Communities on the environment of 22 November 1973,[4] and 17 May 1977,[5] and having regard in particular to the principle that the best policy consists in preventing the creation of pollution or nuisances at source; whereas to this end technical progress should be conceived and directed so as to meet the concern for the protection of the environment;

Whereas the objectives of the Community policy of health and safety at work were fixed by the Council resolution of 29 June 1978 on an action programme of the European Communities on safety and health at work,[6] and having regard in particular to the principle that the best policy consists in obviating possible accidents at source by the integration of safety at the various stages of design, construction and operation;

Whereas the Advisory Committee on Safety, Hygiene and Health Protection at Work, set up by Decision 74/325/EEC,[7] has been consulted;

Whereas, the protection of the public and the environment and safety and health protection at work call for particular attention to be given to certain industrial activities capable of causing major accidents; whereas such accidents have already occurred in the Community and have had serious consequences for workers and, more generally, for the public and the environment;

Whereas, for every industrial activity which involves, or may involve, dangerous substances and which, in the event of a major accident, may have serious consequences for man and the environment, the manufacturer must take all necessary measures to prevent such accident and to limit the consequences thereof;

Whereas the training and information of persons working on an industrial site can play a particularly important part in preventing major accidents and bringing the situation under control in the event of such accidents;

Whereas, in the case of industrial activities which involve or may involve substances that are particularly dangerous in certain quantities, it is necessary for the manufacturer to provide the competent authorities with information including details of the substances in question and high-risk installations and situations, with a view to reducing the hazards of major accidents and enabling the necessary steps to be taken to reduce their consequences;

Whereas it is necessary to lay down that any person outside the establishment liable to be affected by a major accident should be appropriately informed of the safety measures to be taken and of the correct behaviour to be adopted in the event of an accident;

Whereas, if a major accident occurs, the manufacturer must immediately inform the competent authorities and communicate the information necessary for assessing the impact of that accident;

Whereas Member States should forward information to the Commission regarding major accidents occurring on their territory, so that the Commission can analyze the hazards from major accidents;

Whereas this Directive does not preclude the conclusion by a Member State of agreements with third countries concerning the exchange of information to which it is privy at internal level other than that obtained through the Community arrangements for the exchange of information set up by this Directive;

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[1] OJ No C 212, 24.8.1979, p. 4.
[2] OJ No C 175, 14.7.1980, p. 48.
[3] OJ No C 182, 21.7.1980, p. 25.
[4] OJ No C 112, 20.12.1973, p. 1.
[5] OJ No C 139, 13.6.1977, p. 1.
[6] OJ No C 165, 11.7.1978, p. 1.
[7] OJ No L 185, 9.7.1974, p. 15.

Whereas disparity between provisions already applicable or being prepared in the various Member States on measures to prevent major accidents and limit their consequences for man and the environment may create unequal conditions of competition and hence directly affect the functioning of the common market; whereas the approximation of laws provided for in Article 100 of the Treaty should therefore be carried out in this field;

Whereas it seems necessary to combine this approximation of laws with action by the Community aimed at attaining one of the Community objectives in the field of environmental protection and health and safety at work; whereas, in pursuance of this aim, certain specific provisions should therefore be laid down; whereas, since the necessary powers have not been provided by the Treaty, Article 235 of the Treaty should be invoked,

Had adopted this directive:

Article 1

1. This Directive is concerned with the prevention of major accidents which might result from certain industrial activities and with the limitation of their consequences for man and the environment. It is directed in particular towards the approximation of the measures taken by Member States in this field.

2. For the purposes of this directive:

(a) *Industrial activity* means:

Any operation carried out in an industrial installation referred to in Annex I involving, or possibly involving, one or more dangerous substances and capable of presenting major-accidents hazards and also transport carried out within the establishment for internal reasons and the storage associated with this operation within the establishment,

Any other storage in accordance with the conditions specified in Annex II;

(b) *Manufacturer* means: Any person in charge of an industrial activity;

(c) *Major accident* means: An occurrence such as a major emission, fire or explosion resulting from uncontrolled developments in the course of an industrial activity, leading to a serious danger to man, immediate or delayed, inside or outside the establishment, and/or to the environment, and involving one or more dangerous substances;

(d) *Dangerous substances* means: For the purposes of Articles 3 and 4, substances generally considered to fulfill the criteria laid down in Annex IV; for the purposes of Article 5, substances in the lists in Annex III and Annex II in the quantities referred to in the second column.

Article 2

This Directive does not apply to the following:

1. Nuclear installations and plant for the processing of radioactive substances and material;

2. Military installations;

3. The manufacture and separate storage of explosives, gunpowder and munitions;

4. Extraction and other mining operations;

5. Installations for the disposal of toxic and dangerous waste which are covered by Community Acts in so far as the purpose of those Acts is the prevention of major accidents.

Article 3

Member States shall adopt the provisions necessary to ensure that, in the case of any of the industrial activities specified in Article 1, the manufacturer is obliged to take all the measures necessary to prevent major accidents and to limit their consequences for man and the environment.

Article 4

Member States shall take the measures necessary to ensure that all manufacturers are required to prove to the competent authority at any time, for the purposes of the controls referred to in Article 7 (2), that they have identified existing major-accident hazards, adopted the appropriate safety measures, and provided the persons working on the site with information, training and equipment in order to ensure their safety.

Article 5

1. Without prejudice to Article 4, Member States shall introduce the necessary measures to require the manufacturer to notify the competent authorities specified in Article 7: If, in an industrial activity as defined in Article 1 (2)(a), first indent, one or more of the dangerous substances listed in Annex III are involved, or it is recognized that they must be involved, in the quantities laid down in the said Annex, such as: Substances stored or used in connection with the industrial activity concerned; products of manufacture; by-products; or residues; or if, in an industrial activity as defined in Article I (2)(a), second indent, one or more of the dangerous substances listed in Annex II are stored in the quantities laid down in the second column of the same Annex.

The notification shall contain the following:

(a) information relating to substances listed, respectively, in Annex II and Annex III, that is to say: The data and information listed in Annex V; the stage of the activity in which the substances are involved or may be involved; the quantity (order of magnitude); the chemical and/or physical behaviour under normal conditions of use during the process; the forms in which the substances may occur or into which they may be transformed in the case of abnormal conditions which can be foreseen; if necessary, other dangerous substances whose presence could have an effect on the potential hazard presented by the relevant industrial activity.

(b) information relating to the installations, that is to say: The geographical location of the installations and predominant meteorological conditions and sources of danger arising from the location of the site; the maximum number of persons working on the site of the establishment and particularly of those persons exposed to the hazard; a general desciption of the technological processes; a description of the sections of the establishment which are important from the safety point of view, the sources of hazard and the conditions under which a major accident could occur, together with a description of the preventive measures planned; the arrangements made to ensure that the technical means necessary for the safe operation of plant and to deal with any malfunctions that arise are available at all times.

(c) information relating to possible major-accident situations, that is to say: Emergency plans, including safety equipment, alarm systems and resources available for use inside the establishments in dealing with a major accident; any information necessary to the competent authorities to enable them to prepare emergency plans for use outside the establishment in accordance with Article 7 (1); the names of the person and his deputies or the qualified body responsible for safety and authorized to set the emergency plans in motion and to alert the competent authorities specified in Article 7.

2. In the case of new installations, the notification referred to in paragraph 1 must reach the competent authorities a rasonable length of time before the industrial activity commences.

3. The notification specified in paragraph 1 shall be updated periodically to take account on new technical knowledge relative to safety and of developments in knowledge concerning the assessment of hazards.

4. In the case of industrial activities for which the quantities, by substance, laid down in Annex II or III, as appropriate, are exceeded in a group of installations belonging to the same manufacturer which are less than 500 metres apart, the Member States shall take the necessary steps to ensure that the manufacturer supplies the amount of information required for the notification referred to in paragraph 1, without prejudice to Article 7, having regard to the fact that the installations are a short distance apart and that any major-accident hazards may therefore be aggravated.

Article 6

In the event of modification of an industrial activity which could have significant consequences as regards major-accident hazards, the Member States shall take appropriate measures to ensure that the manufacturer: revises the measures specified in Articles 3 and 4, informs the competent authorities referred to in Article 7 in advance, if necessary, of such modification in so far as it affects the information contained in the notification specified in Article 5.

Article 7

1. The Member States shall set up or appoint the competent authority or authorities who, account being taken of the responsibility of the manufacturer, are responsible for: Receiving the notification referred to in Article 5 and the information referred to in the second indent of Article 6; examining the information provided; ensuring that an emergency plan is drawn up for action outside the establishment in respect of whose industrial activity notification has been given; and, if necessary, requesting supplementary information; ascertaining that the manufacturer takes the most appropriate measures, in connection with the various operations involved in the industrial activity for which notification has been given, to prevent major accidents and to provide the means for limiting the consequences thereof.

2. The competent authorities shall organize inspections or other measures of control proper to the type of activity concerned, in accordance with national regulations.

Article 8

1. Member States shall ensure that persons liable to be affected by a major accident originating in a notified industrial activity within the meaning of Article 5 are informed in an appropriate manner of the safety measures and of the correct behavior to adopt in the event of an accident.

2. The Member States concerned shall at the same time make available to the other Member States concerned, as a basis for all necessary consultation within the framework of their bilateral relations, the same information as that which is disseminated to their own nationals.

Article 9

1. This Directive shall apply to both new and existing industrial activities.

2. "New industrial activity" shall also include any modification to an existing industrial activity likely to have important implications for major-accident hazards.

In the case of existing industrial activities, this Directive shall apply at the latest on 8 January 1985.

However, as regards the application of Article 5 to an existing industrial activity, the Member States shall ensure that the manufacturer shall submit to the competent authority, at the latest on 8 January 1985, a declaration comprising: Name or trade name and complete address; registered place of business of the establishment and complete address; name of the director in charge; type of activity; type of production or storage; an indication of the substances or category of substances involved, as listed in Annexes II or III.

4. Moreover, Member States shall ensure that the manufacturer shall, at the latest on 8 July 1989, supplement the declaration provided for in paragraph 3, second, subparagraph, with the data and information specified in Article 5. Manufacturers shall normally be obliged to forward such supplementary declaration to the competent authority; however, Member States may waive the obligation on manufacturers to submit the supplementary declaration; in that event such declaration shall be submitted to

the competent authority at the explicit request of the latter.

Article 10

1. Member States shall take the necessary measures to ensure that, as soon as a major accident occurs, the manufacturer shall be required:

(a) To inform the competent authorities specified in Article 7 immediately;

(b) To provide them with the following information as soon as it becomes available: The circumstances of the accident; the dangerous substances involved within the meaning of Article 1 (2)(d); the date available for assessing the effects of the accident on man and the environment; the emergency measures taken.

(c) To inform them of the steps envisaged: To alleviate the medium and long-term effects of the accident; to prevent any recurrence of such an accident.

2. The Member States shall require the competent authorities:

(a) To ensure that any emergency and medium and long-term measures which may prove necessary are taken;

(b) To collect, where possible, the information necessary for a full analysis of the major accident and possibly to make recommendations.

Article 11

1. Member States shall inform the Commission as soon as possible of major accidents which have occurred within their territory and shall provide it with the information specified in Annex VI as soon as it becomes available.

2. Member States shall inform the Commission of the name of the organization which might have relevant information on major accidents and which is able to advise the competent authorities of the other Member States which have to intervene in the event of such an accident.

3. Member States may notify the Commission of any substance which in their view should be added to Annexes II and III and of any measures they may have taken concerning such substances. The Commission shall forward this information to the other Member States.

Article 12

The Commission shall set up and keep at the disposal of the Member States a register containing a summary of the major accidents which have occurred within the territory of the Member States, including an analysis of the causes of such accidents, experience gained and measures taken, to enable the Member States to use this information for prevention purposes.

Article 13

1. Information obtained by the competent authorities in pursuance of Articles 5, 6, 7, 9, 10 and 12 and by the Commission in pursuance of Article 11 may not be used for any purpose other than that for which it was requested.

2. However this Directive shall not preclude the conclusion by a Member State of agreements with third countries concerning the exchange of information to which it is privy at internal level other than that obtained through the Community machinery for the exchange of information set up by the Directive.

3. The Commission and its officials and employees shall not divulge the information obtained in pursuance of this Directive. The same requirements shall apply to officials and employees of the competent authorities of the Member States as regards any information they obtain from the Commission.

Nevertheless, such information may be supplied: In the case of Articles 12 and 18; when a Member State carries out or authorizes the publication of information concerning that Member State itself.

4. Paragraphs 1, 2 and 3 shall not preclude the publication by the Commission of general statistical data or information on matters of safety containing no specific details regarding particular undertakings or groups of undertakings and not jeopardizing industrial secrecy.

Article 14

The amendments necessary for adapting Annex V to technical progress shall be adopted in accordance with the procedure specified in Article 16.

Article 15

1. For the purposes of applying Article 14, a Committee responsible for adapting this Directive to technical progress (hereinafter referred to as 'the Committee') is hereby set up. It shall consist of representatives of the Member States and be chaired by a representative of the Commission.

2. The Committee shall draw up its own rules of procedure.

Article 16

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by the chairman, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its opinion on the draft within a time limit which may be determined by the chairman according to the urgency of the matter. It shall decide by a majority of 45 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged where these are in accordance with the opinion of the Committee.

(b) Where the measures envisaged are not in accordance with the opinion of the Committee, or in the absence of an opinion, the Commission shall forthwith submit a proposal to the Council on the measures to be adopted. The Council shall act by a qualified majority.

(c) If the Council does not act within three months of the proposal being submitted to it, the measures proposed shall be adopted by the Commission.

Article 17

This Directive shall not restrict the right of the Member States to apply or to adopt administrative or legislative measures ensuring greater protection of man and the environment than that which derives from the provisions of this Directive.

Article 18

Member States and the Commission shall exchange information on the experience acquired with regard to the prevention of major accidents and the limitation of their consequences; this information shall concern, in particular, the functioning of the measures provided for in this Directive. Five years after notification of this Directive, the Commission shall forward to the Council and the European Parliament a report on its application which it shall draw up on the basis of this exchange of information.

Article 19

At the latest on 8 January 1986 the Council shall, on a proposal from the Commission, review Annexes I, II and III.

Article 20

1. Member States shall take the measures necessary to comply with this Directive at the latest on 8 January 1984. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 21

This Directive is addressed to the Member States.

Done at Luxembourg, 24 June 1982.

F. AERTS, *For the Council The President.*

[Annex I]

INDUSTRIAL INSTALLATIONS WITHIN THE MEANING OF ARTICLE 1

1. Installations for the production or processing of organic or inorganic chemicals using for this purpose, in particular: alkylation, amination by ammonolysis, carbonylation, condensation, dehydrogenation, esterification, halogenation and manufacture of halogens, hydrogenation, hydrolysis, oxidation, polymerization, sulphonation, desulphurization, manufacture and transformation of sulphur-containing compounds, nitration and manufacture of nitrogen-containing compounds, manufacture of phosphorus-containing compounds, formulation of pesticides and of pharmaceutical products.

Installations for the processing of organic and inorganic chemical substances, using for this purpose, in particular: distillation, extraction, solvation, mixing.

2. Installations for distillation, refining or other processing of petroleum or petroleum products.

3. Installations for the total or partial disposal of solid or liquid substances by incineration or chemical decomposition.

4. Installations for the production or processing of energy gases, for example, LPG, LNG, SNG.

5. Installations for the dry distillation of coal or lignite.

6. Installations for the production of metals or non-metals by the wet process or by means of electrical energy.

[Annex II]

STORAGE AT INSTALLATIONS OTHER THAN THOSE COVERED BY ANNEX I

("Isolated Storage")

The quantities set out below relate to each installation or group of installations belonging to the same manufacturer where the distance between the installations is not sufficient to avoid, in foreseeable circumstances, any aggravation of major-accident hazards. These quantities apply in any case to each group of installations belonging to the same manufacturer where the distance between the installations is less than approximately 500 m.

Substances or groups of substances	Quantities (tonnes) >	
	For application of articles 3 and 4	For application of article 5
1 Flammable gases as defined in Annex IV(c)(i)	50	[1] 300
2. Highly flammable liquids as defined in Annex IV(c)(ii)	10,000	100,000
3 Acrylonitrile	350	5,000
4 Ammonia	60	600
5 Chlorine	10	200
6 Sulphur dioxide	20	500
7 Ammonium nitrate	[2] 500	[2] 5,000
8 Sodium chlorate	25	[2] 250
9 Liquid oxygen	200	[2] 2,000

[1] Member States may provisionally apply Article 5 to quantities of at least 500 tonnes until the revision of Annex II mentioned in Article 19.

[2] Where the substance is in a state which gives it properties capable of creating a major-accident hazard.

[Annex III]

LIST OF SUBSTANCES FOR THE APPLICATION OF ARTICLE 5

The quantities set out below relate to each installation or group of installations belonging to the same manufacturer where the distance between the installations is not sufficient to avoid, in foreseeable circumstances, any aggravation of major-accident hazards. These quantities apply in any case to each group of installations belonging to the same manufacturer where the distance between the installations is less than approximately 500 m.

Name	Quantity (>)	CAS No	EEC No
1 4-Aminodiphenyl	1 kg	92-67-1	
2 Benzidine	1 kg	92-87-5	612-042-00-2
3 Benzidine salts	1 kg		
4 Dimethylnitrosamine	1 kg	62-75-9	
5 2-Naphthylamine	1 kg	91-59-8	612-072-00-3
6 Beryllium (powders, compounds)	10 kg		
7 Bis(chloromethyl) ether	1 kg	542-88-1	603-046-00-5

Name	Quantity (>)	CAS No	EEC No
8. 1,3 Propanesultone	1 kg	1120-71-4	
9. 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1 kg	1746-01-6	
10. Arsenic pentoxide, Arsenic (V) acid and salts	500 kg		
11. Arsenic trioxide, Arsenious (III) acid and salts	100 kg		
12. Arsenic hydride (Arsine).	10 kg	7784-42-1	
13. Dimethylcarbamoyl chloride	1 kg	79-44-7	
14. 4-(Chloroformyl) morpholine.	1 kg	15159-40-7	
15. Carbonyl chloride (Phosgene).	20 t	75-44-5	006-002-00-8
16. Chlorine	50 t	7782-50-5	017-001-00-7
17. Hydrogen sulphide	50 t	7783-06-04	016-001-00-4
18. Acrylonitrile	200 t	107-13-1	608-003-00-4
19. Hydrogen cyanide	20 t	74-90-8	006-006-00-X
20. Carbon disulphide	200 t	75-15-0	006-003-00-3
21. Bromine	500 t	7726-95-6	035-001-00-5
22. Ammonia	500 t	7664-41-7	007-001-00-5
23. Acetylene (Ethyne)	50 t	74-86-2	601-015-00-0
24. Hydrogen	50 t	1333-74-0	001-001-00-9
25. Ethylene oxide	50 t	75-21-8	603-023-00-X
26. Propylene oxide	50 t	75-56-9	603-055-00-4
27. 2-Cyanopropan-2-ol (Acetone cyanohydrin).	200 t	75-86-5	608-004-00-X
28. 2-Propenal (Acrolein).	200 t	107-02-8	605-008-00-3
29. 2-Propen-1-ol (Allyl alcohol).	200 t	107-18-6	603-015-00-6
30. Allylamine	200 t	107-11-9	612-046-00-4
31. Antimony hydride (Stibine).	100 kg	7803-52-3	
32. Ethyleneimine	50 t	151-56-4	613-001-00-1
33. Formaldehyde (concentration > 90%).	50 t	50-00-0	605-001-01-2
34. Hydrogen phosphide (Phosphine).	100 kg	7803-51-2	
35. Bromomethane (Methyl bromide).	200 t	74-83-9	602-002-00-3
36. Methyl isocyanate	1 t	624-83-9	615-001-00-7
37. Nitrogen oxides	50 t	11104-93-1	
38. Sodium selenite	100 kg	10102-18-8	
39. Bis(2-chloroethyl) sulphide.	1 kg	505-60-2	
40. Phosacetim	100 kg	4104-14-7	015-092-00-8
41. Tetraethyl lead	50 t	78-00-2	
42. Tetramethyl lead	50 t	75-74-1	
43. Promurit (1-(3,4-Dichlorophenyl)-3-triazenethiocarboxamide).	100 kg	5836-73-7	
44. Chlorfenvinphos	100 kg	470-90-6	015-071-00-3
45. Crimidine	100 kg	535-89-7	613-004-00-8
46. Chloromethyl methyl ether.	1 kg	107-30-2	
47. Dimethyl phosphoramidocyanidic acid.	1 t	63917-41-9	
48. Carbophenothion	100 kg	786-19-6	015-044-00-6
49. Dialifus	100 kg	10311-84-9	015-088-00-6
50. Cyanthoate	100 kg	3734-95-0	015-070-00-8
51. Amitron	1 kg	78-53-5	
52. Oxydisulfoton	100 kg	2497-07-6	015-096-00-X
53. OO-Diethyl S-ethylsulphinylmethyl phosphorothioate.	100 kg	2588-05-8	
54. OO-Diethyl S-ethylsulphonylmethyl phosphorothioate.	100 kg	2588-06-9	
55. Disulfoton	100 kg	298-04-4	015-060-00-3
56. Demeton	100 kg	8065-48-3	
57. Phorate	100 kg	298-02-2	015-033-00-6
58. OO-Diethyl S-ethylthiomethyl phosphorothioate.	100 kg	2600-69-3	
59. OO-Diethyl S-isopropylthiomethyl phosphorodithioate.	100 kg	78-52-4	
60. Pyrazoxon	100 kg	108-34-9	015-023-00-1
61. Pensulfothion	100 kg	115 90-2	015-090-00-7
62. Paraoxon (Diethyl 4-nitrophenyl phosphate).	100 kg	311-45-5	
63. Parathion	100 kg	56-38-2	015-034-00-1
64. Azinphos-ethyl	100 kg	2642-71-9	015-056-00-1
65. OO-Diethyl S-propylthiomethyl phosphorodithioate.	100 kg	3309-68-0	
66. Thionazin	100 kg	297-97-2	
67. Carbofuran	100 kg	1563-66-2	006-026-00-9
68. Phosphamidon	100 kg	13171 21-6	015-022-00-6
69. Tirpate (2,4-Dimethyl-1,3-dithiolane-2-carboxaldehyde O-methylcarbamoyloxime).	100 kg	26419-73-8	
70. Mevinphos	100 kg	7786-34-7	015-020-00-5
71. Parathion-methyl	100 kg	298-00-0	015-035-00-7
72. Azinphos-methyl	100 kg	86-50-0	015-039-00-9
73. Cycloheximide	100 kg	66-81-9	
74. Diphacinone	100 kg	82-66-6	
75. Tetramethylenedisulphotetramine.	1 kg	80-12-6	
76. EPN	100 kg	2104-64-5	015-036-00-2
77. 4-Fluorobutyric acid	1 kg	462-23-7	
78. 4-Fluorobutyric acid, salts.	1 kg		
79. 4-Fluorobutyric acid, esters.	1 kg		
80. 4-Fluorobutyric acid, amides.	1 kg		
81. 4-Fluorocrotonic acid.	1 kg	37759-72-1	
82. 4-Fluorocrotonic acid, salts.	1 kg		
83. 4-Fluorocrotonic acid, esters.	1 kg		
84. 4-Fluorocrotonic acid, amides.	1 kg		
85. Fluoroacetic acid	1 kg	144-49-0	607-081-00-7
86. Fluoroacetic acid, salts.	1 kg		
87. Fluoroacetic acid, esters.	1 kg		
88. Fluoroacetic acid, amides.	1 kg		
89. Fluenetil	100 kg	4301-50-2	607-078-00-0
90. 4-Fluoro-2-hydroxybutyric acid.	1 kg		
91. 4-Fluoro-2-hydroxybutyric acid, salts.	1 kg		
92. 4-Fluoro-2-hydroxybutyric acid, esters.	1 kg		
93. 4-Fluoro-2-hydroxybutyric acid, amides.	1 kg		
94. Hydrogen fluoride	50 t	7664-39-3	009-002-00-6
95. Hydroxyacetonitrile (Glycolonitrile).	100 kg	107-16-4	
96. 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin.	100 kg	19408-74-3	
97. Isodrin	100 kg	465-73-6	602-050-00-4
98. Hexamethylphosphoramide.	1 kg	680-31-9	
99. Juglone (5-Hydroxynaphthalene-1,4-dione).	100 kg	481-39-0	
100. Warfarin	100 kg	81-81-2	607-056-00-0
101. 4,4-Methylenebis (2-chloroaniline).	10 kg	101-14-4	
102. Ethion	100 kg	563-12-2	015-047-00-2
103. Aldicarb	100 kg	116-06-3	006-017-00-X
104. Nickel tetracarbonyl.	10 kg	13463-39-3	028-001-00-1
105. Isobenzan	100 kg	297-78-9	602-053-00-0
106. Pentaborane	100 kg	19624-22-7	
107. 1-Propen-2-chloro-1,3-diol-diacetate.	10 kg	10118-72-6	
108. Propyleneimine	50 t	75-55-8	
109. Oxygen difluoride	10 kg	7783-41-7	
110. Sulphur dichloride	1 t	10545-99-0	016-013-00-X
111. Selenium hexafluoride.	10 kg	7783-79-1	
112. Hydrogen selenide	10 kg	7783-07-5	
113. TEPP	100 kg	107-49-3	015-025-00-2
114. Sulfotep	100 kg	3689-24-5	015-027-00-3
115. Dimefox	100 kg	115-26-4	015-061-00-9
116. 1-Tri(cyclohexyl)stannyl-1H-1,2,4-triazole	100 kg	41083-11-8	

Name	Quantity (>)	CAS No.	EEC No.
117. Triethylenemelamine.	10 kg	51-18-3	
118. Cobalt (powders, compounds)	100 kg		
119. Nickel (powders, compounds)	100 kg		
120. Anabasine	100 kg	494-52-0	
121. Tellurium hexafluoride.	100 kg	7783-80-4	
122. Trichloromethanesulphenyl chloride.	100 kg	594-42-3	
123. 1,2-Dibromoethane (Ethylene dibromide).	50 t	106-93-4	602-010-00-6
124. Flammable substances as defined in Annex IV (c) (i).	200 t		
125. Flammable substances as defined in Annex IV (c) (ii).	50,000 t		
126. Diazodinitrophenol	10 t	7008-81-3	
127. Diethylene glycol dinitrate.	10 t	693-21-0	603-033-00-4
128. Dinitrophenol, salts	50 t		609-017-00-3
129. 1-Guanyl-4-nitrosaminoguanyl-1-tetrazene.	10 t	109-27-3	
130. Bis (2,4,6-trinitrophenyl) amine.	50 t	131-73-7	612-018-00-1
131. Hydrazine nitrate	50 t	13464-97-6	
132. Nitroglycerine	10 t	55-63-0	603-034-00-X
133. Pentaerythritol tetranitrate.	50 t	78-11-5	603-035-00-5
134. Cyclotrimethylene trinitramine.	50 t	121-82-4	
135. Trinitroaniline	50 t	26952-42-1	
136. 2,4,6-Trinitroanisole.	50 t	606-35-9	609-011-00-0
137. Trinitrobenzene	50 t	25377-32-6	609-005-00-8
138. Trinitrobenzoic acid	50 t	35860-50-5 129-66-8	
139. Chlorotrinitrobenzene	50 t	28260-61-9	610-004-00-X
140. N-Methyl-N,2,4,6-N-tetranitroaniline.	50 t	479-45-8	612-017-00-6
141. 2,4,6-Trinitrophenol (Picric acid)	50 t	88-89-1	609-009-00-X
142. Trinitrocresol	50 t	28905-71-7	609-012-00-6
143. 2,4,6-Trinitrophenetole.	50 t	4732-14-3	
144. 2,4,6-Trinitroresorcinol (Styphnic acid)	50 t	82-71-3	609-018-00-9
145. 2,4,6-Trinitrotoluene.	50 t	118-96-7	609-008-00-4
146. Ammonium nitrate ([1]).	5000 t	6484-52-2	
147. Cellulose nitrate (containing > 12.6% nitrogen).	100 t	9004-70-0	603-037-00-6
148. Sulphur dioxide	1000 t	7446-09-05	016-011-00-9
149. Hydrogen chloride (liquefied gas).	250 t	7647-01-0	017-002-00-2
150. Flammable substances as defined in Annex IV(c) (iii).	200 t		
151. Sodium chlorate([1]).	250 t	7775-09-9	017-005-00-9
152. tert-Butyl peroxyacetate (concentration > 70%).	50 t	107-71-1	
153. tert-Butyl peroxyisobutyrate (concentration > 80%).	50 t	109-13-7	
154. tert-Butyl peroxymaleate (concentration > 80%).	50 t	1931-62-0	
155. tert-Butyl peroxy isopropyl carbonate (concentration > 80%).	50 t	2372-21-6	
156. Dibenzyl peroxydicarbonate (concentration > 90%).	50 t	2144-45-8	
157. 2,2-Bis (tert-butylperoxy) butane (concentration > 70%).	50 t	2167-23-9	
158. 1,1-Bis (tert-butylperoxy) cyclohexane (concentration > 80%).	50 t	3006-86-8	
159. Di-sec-butyl peroxydicarbonate (concentration > 80%).	50 t	19910-65-7	
160. 2,2-Dihydroperoxypropane (concentration > 30%).	50 t	2614-76-8	
161. Di-n-propyl peroxydicarbonate (concentration > [illegible]0%).	50 t	16066-38-9	
162. 3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane (concentration > 75%).	50 t	22397-33-7	
163. Methyl ethyl ketone peroxide (concentration > 60%).	50 t	1338-23-4	
164. Methyl isobutyl ketone peroxide (concentration > 60%).	50 t	37206-20-5	
165. Peracetic acid (concentration > 60%).	50 t	79-21-0	607-094-00-8
166. Lead azide	50 t	13424-46-9	082-003-00-7
167. Lead 2,4,6-trinitroresorcinoxide (Lead styphnate).	50 t	15245-44-0	609-019-00-4
168. Mercury fulminate	50 t	20820-45-5 628-86-4	080-005-00-2
169. Cyclotetramethylenetetranitramine.	50 t	2691-41-0	
170. 2,2',4,4',6,6'-Hexanitrostilbene.	50 t	20062-22-0	
171. 1,3,5-Triamino-2,4,6-trinitrobenzene.	50 t	3058-38-6	
172. Ethylene glycol dinitrate.	50 t	628-96-6	603-032-00-9
173. Ethyl nitrate	50 t	625-58-1	007-007-00-8
174. Sodium picramate	50 t	831-52-7	
175. Barium azide	50 t	13810-58-7	
176. Di-isobutyryl peroxide (concentration > 50%).	50 t	3437-84-1	
177. Diethyl peroxydicarbonate (concentration > 30%).	50 t	14666-78-5	
178. tert-Butyl peroxypivalate (concentration > 77%).	50 t	927-07-1	

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[1] Where this substance is in a state which gives it properties capable of creating a major accident hazard

NB: The EEC numbers correspond to those in Directive 67/548/EEC and its amendments.

[Annex IV]

INDICATIVE CRITERIA

(a) Very toxic substances: Substances which correspond to the first line of the table below; substances which correspond to the second line of the table below and which, owing to their physical and chemical properties, are capable of entailing major-accident hazards similar to those caused by the substance mentioned in the first line:

LD 50 (oral) (1) mg/kg body weight	LD 50 (cutaneous) (2) mg/kg/body weight	LC 50 (3) mg/l (inhalation)
LD 50 < 5	LD 50 < 10	LC 50 < 0.1
5 < LD 50 < 25	10 < LD 50 < 50	0.1 < LC 50 < 0.5

(1) LD 50 oral in rats.
(2) LD 50 cutaneous in rats or rabbits.
(3) LD 50 by inhalation (four hours) in rats.

(b) Other toxic substances: The substances showing the following values of acute toxicity and having physical and chemical properties capable of entailing major-accident hazards:

LD 50 (oral) (1) mg/kg body weight	LD 50 (cutaneous) (2) mg/kg/body weight	LC 50 (3) mg/l (inhalation)
25 < LD 50< 200	50 < 50 < 400	0.5 < LC 50 < 2

(1) LD 50 oral in rats.
(2) LD 50 cutaneous in rats or rabbits.
(3) LD 50 by inhalation (four hours) in rats.

(c) Flammable substances:

(i) *flammable gases:* Substances which in the gaseous state at normal pressure and mixed with air become flammable and the boiling point of which at normal pressure is 20 °C or below:

(ii) *highly flammable liquids:* Substances which have a flash point lower than 21 °C and the boiling point of which at normal pressure is above 20 °C;

(iii) *flammable liquids:* Substances which have a flash point lower than 55 °C and which remain liquid under pressure, where particular processing conditions, such as high pressure and high temperature, may create major-accident hazards.

(d) Explosive substances: Substances which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.

[Annex V]

DATA AND INFORMATION TO BE SUPPLIED IN CONNECTION WITH THE NOTIFICATION PROVIDED FOR IN ARTICLE 5

If it not possible or if it seems unnecessary to provide the following information, reasons must be given.

1. Identity of the substance

Chemical name

CAS number

Name according to the IUFAC nomenclature

Other names

Empirical formula

Composition of the substance

Degree of purity

Main impurities and relative percentages

Detection and determination methods available to the installation

Description of the methods used or references to scientific literature

Methods and precautions laid down by the manufacturer in connection with handling, storage and fire

Emergency measures laid down by the manufacturer in the event of accidential dispersion

Methods available to the manufacturer for rendering the substance harmless

2. Brief indication of hazards

—For man:

—Immediate.

—Delayed.

—For the environment:

—Immediate.

—Delayed.

[Annex VI]

INFORMATION TO BE SUPPLIED TO THE COMMISSION BY THE MEMBER STATES PURSUANT TO ARTICLE 11

Report of Major Accident:

Member State:

Authority responsible for report:

Address:

1. General data:

Date and time of the major accident:

Country, administrative region, etc.:

Address:

Type of industrial activity:

2. Type of major accident: Explosion—— Fire—— Emission of dangerous substances——.

Substance(s) emitted:

3. Description of the circumstances of the major accident:

4. Emergency measures taken:

5. Cause(s) of major accident:

Known: (to be specified)——.

Not known: Information will be supplied as soon as possible——.

6. Nature and extent of damage:

(a) *Within the establishment:*

Casualties: ——killed; ——injured; ——poisoned.

Persons exposed to the major accident ——.

Material damage ——.

The danger is still present ——.

The danger no longer exists ——.

(b) *Outside the establishment:*

Casualties: ——killed; ——injured; ——poisoned.

Persons exposed to the major accident ——.

Material damage ——.

Damage to the environment ——.

The danger is still present ——.

The danger no longer exists ——.

7. Medium and long-term measures, particularly those aimed at preventing the recurrence of similar major accidents (to be submitted as the information becomes available).

[Annex VII]

STATEMENT RE ARTICLE 8

The Member States shall consult one another in the framework of their bilateral relations on the measures required to avert major accidents originating in a notified industrial activity within the meaning of Article 5 and to limit the consequences for man and the environment. In the case of new installations, this consultation shall take place within the time limits laid down in Article 5(2).

[From the New York Times, Jan. 28, 1985]

THE BHOPAL DISASTER: HOW IT HAPPENED

(By Stuart Diamond)

NEW DELHI, Jan. 27.—The gas leak at a chemical plant in central India on Dec. 3 that killed at least 2,000 people was the result of operating errors, design flaws, maintenance failures and training deficiencies, according to present and former employees, company technical documents and the Indian Government's chief scientist.

Those are among the findings of a seven-week inquiry begun by reporters of The New York Times after the leak of toxic methyl isocyanate gas at a Union Carbide plant in Bhopal, India, produced history's worst industrial disaster, stunning India and the world. Among the questions the tragedy raised were how it could have happened and who was responsible.

The inquiry involved more than 100 interviews in Bhopal, New Delhi, Bombay, New York, Washington, Danbury, Conn., and Institute, W. Va. It unearthed information not available even to the Union Carbide Corporation, the majority owner of the plant where the lead occurred, because the Indian authorities have denied corporate representatives access to some documents, equipment and personnel.

EVIDENCE OF VIOLATIONS

The Times investigation produced evidence of at least 10 violations of the standard procedures of both the parent corporation and its Indian-run subsidiary.

Executives of Union Carbide India Ltd., which operated the plant, are reluctant to address the question of responsibility for the tragedy, in which about 200,000 people were injured. The plant's manager has declined to discuss the irregularities. The managing director of the Indian company refused to talk about details of the accident or the conditions that produced it, although he did say that the enforcement of safety regulations was the responsibility of executives at the Bhopal plant.

When questioned in recent days about the shortcomings disclosed in the inquiry by The Times, a spokesman at Union Carbide corporate headquarters in Danbury charactertized any suggestion of the accident's causes as speculation and emphasized that Union Carbide would not "contribute" to that speculation.

SUMMARY OF IRREGULARITIES

A review by The Times of some company documents and interviews with chemical experts, plant workers, company officials and former officials diclosed these and other irregularities at Bhopal:

When employees discovered the initial leak of methyl isocyanate at 11:30 P.M. on Dec. 2, a supervisor—believing, he said later, that it was a water leak—decided to deal with it only after the next tea break, several workers said. In the next hour or more, the reaction taking place in a storge tank went out of control. "Internal leaks never bothered us," said one employee. Indeed, workers said that the reasons for leaks were rarely investigated. The problems were either fixed without further examination or ignored, they said.

Several months before the accident, plant employees say, managers shut down a refrigeration unit designed to keep the methyl isocyanate cool and inhibit chemical reactions. The shutdown was a violation of plant procedures.

The leak began, according to several employees, about two hours after a worker whose training did not meet the plant's original standards was ordered by a novice supervisor to wash out a pipe that had not been properly sealed. That procedure is prohibited by plant rules. Workers think the most likely source of the contamination that started the reaction leading to the accident was water from this process.

The three main safety systems, at least two of which, technical experts said, were built according to specifications drawn for a Union Carbide plant at Institute, W. Va., were unable to cope with conditions that existed on the night of the accident. Moreover, one of the systems had been inoperable for several days, and a second had been out of service for maintenance for several weeks.

Plant operators failed to move some of the methyl isocyanate in the problem tank to a spare tank as required because, they said, the spare was not empty as it should have been. Workers said it was a common practice to leave methyl isocyanate in the spare tank, though standard procedures required that it be empty.

Instruments at the plant were unreliable, according to Shakil Qureshi, the methyl isocyanate supervisor on duty at the time of the accident. For that reason, he said, he ignored the initial warning of the accident, a gauge's indication that pressure in one of three methyl isocyanate storage tanks had risen fivefold in an hour.

The Bhopal plant does not have the computer system that more sophisticated operations, including the West Virginia plant, use to monitor their functions and quickly alert the staff to leaks, employees said. The management, they added, relied on workers to sense escaping methyl isocyanate as their eyes started to water. That practice violated specific orders in the parent corporation's technical manual, titled "Methyl Isocyante," which sets out the basic policies for the manufacture, storage and transportation of the chemical. The manual says: "Although the tear gas effects of the vapor are extremely unpleasant, this property cannot be used as a means to alert personnel."

Training levels and requirements for experience and education had been sharply reduced, according to many plant employees, who said the cutbacks were the result, at least in part, of budget reductions.

The staff at the methyl isocyanate plant, which had little automated equipment, was cut from 12 operators on a shift to 6 in 1983, according to several employees. The plant "cannot be run safely with six people," said Kamal K. Pareek, a chemical engineer who began working at the Bhopal plant in 1971 and was senior project engineer during the building of the methyl isocyanate facility there eight years ago.

There were no effective public warnings of the disaster. The alarm that sounded on the night of the accident was similar or identical to those sounded for various purposes, including practice drills, about 20 times in a typical week, according to employees. No brochures or other materials had been distributed in the area around the plant warning of the hazards it presented, and there was no public education program about what to do in an emergency, local officials said.

Most workers, according to many employees, panicked as the gas escaped, running away to save their own lives and ignoring buses that sat idle on the plant grounds, ready to evacuate nearby residents.

A TOP PRIORITY

At its headquarters in Danbury, the parent corporation said last month: "Union Carbide regards safety as a top priority. We take great steps to insure that the plants of our affiliates, as well as our own plants, are properly equipped with safeguards and the employees are properly trained."

Over the weekend in response to questions from The Times, a corporate spokesman described the managers of the Indian affiliate as "well qualified" and cited their "excellent record," adding that because of the possibility of litigation in India "judicial and ethical rules and practices inhibit them from answering questions."

However, the spokesman said: "Responsibility for plant maintenance, hiring and training of employees, establishing levels of training and determining proper staffing levels rests with plant management.

RESPONSIBILITY FOR SAFETY

V.P. Gokhale, the chief operating officer of Union Carbide India Ltd., in his first detailed interview since Dec. 3, would not comment on specific violations or the cause of the accident, but he said the Bhopal plant was responsible for its own safety, with little scrutiny from outside experts.

The Indian company has one safety officer at its headquarters in Bombay, Mr. Gokhale said, but that officer is chiefly responsible for keeping up to date the safety manuals used at the company's plants.

Despite the Bhopal plant's autonomy on matters of safety, it was inspected in 1982 by experts from the parent company in the United States, and they filed a critical report.

In the interview, however, Mr. Gokhale contended that the many problems cited in the 1982 report had been corrected. "There were no indications of problems," he said. "We had no reason to believe there were any grounds for such an accident."

Mr. Gokhale, who became managing director of Union Carbide India in December 1982 and has been with the company 25 years added: "There is no way with 14 factories and 28 sales branches all over the country and 9,000 employees that I could personally supervise any plant on a week-to-week basis."

At perhaps a dozen points during a two-hour interview, he spoke his answers into a tape recorder, saying he would inform the parent corporation's Danbury headquarters of what he had said. He also made notes of some of his comments and said he would send them to Danbury for approval by Union Carbide lawyers.

RELATIONSHIP OF THE COMPANIES

The precise relationship between Union Carbide's American headquarters and its Indian affiliate is a subject that Mr. Gokhale and other company officials have refused to discuss in detail. But an understanding of that relationship is a key element in pinpointing responsibility for the disaster at Bhopal. Lawyers from both the United States and India say it is also central to the lawsuits brought by Bhopal residents demaged by the accident.

Although the situation remains unclear, some evidence of the relationship between the Indian and American companies has begun to emerge. The United States corporation has direct representation on the Indian company's board. J. M. Rehfield, an executive vice president in Danbury, sits on that board, Mr. Gokhale acknowledged, as do four representatives of Union Carbide Eastern Inc., a division based in Hong Kong. Mr. Gokhale said the board of directors reviews reports on the Indian affiliate's operations.

Moreover, some key safety decisions affecting Bhopal were reportedly made or reviewed at the corporate headquarters in Danbury.

Srinivasan Varadarajan, the Indian Government's chief scientist, said his staff had been told by managers of the Bhopal plant that the refrigeration unit designed to chill the methyl isocyanate, which he said was very small and had never worked satisfactorily, had been disconnected because the managers had concluded after discussions with American headquarters that the device was not necessary.

A spokesman at corporate headquarters in Danbury, Thomas Failla, said: "As far as we have been able to establish, the question of turning off the refrigeration unit was not discussed with anyone at Union Carbide Corporation."

The methyl isocyanate operating manual in use at Bhopal, which was adapted by five Indian engineers from a similar document written for the West Virginia plant, according to a former senior official at Bhopal, says: "Keep circulation of storage tank contents continuously 'ON' through the refrigeration unit."

And a senior official of Union Carbide India said few if any people would have died Dec. 3 had the unit been running because it would have slowed the chemical reaction that took place during the accident and increased the warning time from two hours to perhaps two days.

Workers said that when the 30-ton refrigeration unit was shut down, electricity was saved and the Freon in the coils of the cooling unit was pumped out to be used elsewhere in the plant.

Mr. Gokhale specifically declined to answer questions about the refrigeration unit.

EMPLOYEES CRITICIZE MORALE

Many employees at the Bhopal plant described a factory that was once a showpiece but that, in the face of persistent sales deficits since 1982, had lost much of its highly trained staff, its morale and its attention to the details that insure safe operation.

"The whole industrial culture of Union Carbide at Bhopal went down the drain," said Mr. Pareek, the former project engineer. "The plant was losing money, and top management decided that saving money was more important than safety. Maintenance practices became poor, and things generally got sloppy. The plant didn't seem to have a future, and a lot of skilled people became depressed and left as a result."

Mr. Pareek said he resigned in December 1983 because he was disheartened about developments at the plant and because he was offered a better job with Goodyear India Ltd. as a divisional production manager.

Mr. Gokhale termed the company's cost-cutting campaign simply an effort to reduce "avoidable and wasteful expenditures."

The corporate spokesman in Danbury said Union Carbide has "an ongoing operations improvement program which involves, among other things, a regular review of ways to reduce costs." He said Union Carbide India was involved in such programs, "but the details of those programs at the Bhopal plant are not known to us."

The spokesman added: "Financial information supplied to us indicated that the Bhopal plant was not profitable."

In the absence of official company accounts, details of the accident and its causes have been provided by technical experts such as Dr. Varadarajan and Mr. Pareek and by three dozen plant workers, past and present company officials and other people with direct knowledge of the factory's operations. Many of them agreed to be interviewed only on condition that they not be identified. Most of the workers knew little English and spoke in Hindi through an interpreter.

They provided some documents but often relied upon their recollections because many plant files and even public records have been impounded by the Indian authorities investigating the accident.

POTENTIAL FOR SERIOUS ACCIDENT

Nearly all those interviewed contended that the company had been neither technically nor managerially prepared for the accident. The 1982 inspection report seemed to support that view, saying the Bhopal plant's safety problems represented "a higher potential for a serious accident or more serious consequences if an accident should occur."

That report "strongly" recommended, among other things, the installation of a larger system that would supplement or replace one of the plant's main safety devices, a water spray designed to contain a chemical leak. That change was never made, plant employees said, and on Dec. 3 the spray was not high enough to reach the escaping gas.

The spokesman in Danbury said the corporation had been informed that Union Carbide India had taken "all the action it considered necessary to respond effectively" to the 1982 report.

Another of the safety devices, a gas scrubber or neutralizer, one of the systems said to have been built according to the specifications used at the West Virginia plant, was unable to cope with the accident because it has a maximum design pressure one-quarter that of the leaking gas, according to plant documents and employees.

The third safety system, a flare tower that is supposed to burn off escaping gases, would theoretically have been capable of handling about a quarter of the volume of the leaking gas were it not under such pressure, according to Mr. Pareek. The pressure, he said, was high enough to burst a tank through which gases must flow before being channeled up the flare tower. The tower was the second system described by technical experts as conforming to the specifications used in West Virginia.

In any case, the pressure limitations of the flare tower were immaterial because it was not operating at the time of the accident.

GUIDELINES FOR DESIGN

A former executive at the Bhopal plant said the parent corporation had provided guidelines for the design of the scrubber, the flare tower and the spray system. But detailed design work for those systems and the entire plant, he said, was performed by Humphreys & Glasgow Pvt. Ltd. of Bombay, a subsidiary of Humphreys & Glasgow Ltd. of London, a consulting company based in London. The London company in turn is owned by the Enserch Corporation of Dallas.

The spokesman in Danbury said the Union Carbide Corporation had provided its Indian affiliate with "a process design package containing information necessary and sufficient" for the affiliate to arrange the design and construction of the plant and its equipment.

The spokesman said the corporation had only incomplete information on the scrubber, flare tower and other pieces of equipment, and he declined to comment on their possible relationship to the accident.

It was unclear whether the limitations of the safety systems resulted from the guidelines provided by the Union Carbide Corporation or from the detailed designs.

Employees at the plant recalled after the accident that during the evening of Dec. 2 they did not realize how high the pressures were in the system. Suman Dey, the senior operator on duty, said he was in the control room at about 11 P.M. and noticed that the pressure gauge in one tank read 10 pounds a square inch, about five times normal. He said he had thought nothing of it.

Mr. Qureshi, an organic chemist who had been a methyl isocyanate supervisor at the plant for two years, had the same reaction half an hour later. The readings were probably inaccurate, he thought. "There was a continual problem with instruments," he said later. "Instruments often didn't work."

LEAK FOUND BUT TEA IS FIRST

About 11:30 P.M., workers in the methyl isocyanate structure, about 100 feet from the control room, detected a leak. Their eyes started to water.

V. N. Singh, an operator, spotted a drip of liquid about 50 feet off the ground, and some yellowish-white gas in the same area. He said he went to the control room about 11:45 and told Mr. Qureshi of a methyl isocyanate leak. He quoted Mr. Qureshi as responding that he would see to the leak after tea.

Mr. Qureshi contended in an interview that he had been told of a water leak, not an escape of methyl isocyanate.

No one investigated the leak until after tea ended, about 12:40 A.M., according to the employees on duty.

Such inattention merely compounded an already dangerous situation according to Dr. Varadarajan, the Government scientist.

He is a 56-year-old organic and biological chemist who holds doctoral degrees from Cambridge and Delhi universities and was a visiting lecturer in biological chemistry at the Massachusetts Institute of Technology. He heads the Council of Scientific and Industrial Research, the Government's central research organization, which operates 42 national laboratories.

In the two weeks after the accident, Dr. Varadarajan said, he and a staff gathered from the research council questioned factory managers at Bhopal, directed experiments conducted by the plant's research staff and analyzed the results of those tests. Some of the experiments were conducted on methyl isocyanate that remained at the Bhopal plant after the accident, he said, and some were designed to measure the reliability of testing procedures used at the factory.

Dr. Varadarajan said in a long interview that routine tests conducted at the Bhopal factory used a faulty method, so the substance may have been more reactive than the company believed.

For example, he said, the Bhopal staff did not adequately measure the incidence in methyl isocyanate or the possible effects of chloride ions, which are highly reactive in the presence of small amounts of water. Chlorine, of which chloride is an ion, is used in the manufacture of methyl isocyanate.

Dr. Varadarajan argued that the testing procedure used at Bhopal assumed that all of the chloride ions present resulted from the breakdown of phosgene and therefore the tests measured phosgene, not chloride ions. Phosgene is used in the manufacture of methyl isocyanate, and some of it is left in the compound to inhibit certain chemical reactions.

When his staff secretly added chloride ions to methyl isocyanate to be tested by the factory staff, Dr. Varadarajan said, the tests concluded that 23 percent of the chloride was phosgene.

"As yet," the scientist said, "Union Carbide has been unable to provide an unequivocal method of distinguishing between phosgene and chloride" in methyl isocyanate.

The Union Carbide spokesman in Danbury said: "Tests for chloride-containing materials, including chloride ions in the tank are made routinely."

Dr. Varadarajan said his staff had produced its own hypotheses of the accident's causes after Union Carbide failed to provide any, even on request.

The spokesman in Danbury said that a team of "exceptionally well qualified" Chemists and engineers from Union Carbide had been studying the accident for seven weeks "and still has not been able to determine the cause." He added:

"Anyone who attempts to state what caused the accident would be only speculating unless he has more facts than we have and has done more analysis, tests and experiments than we have. Anyone who speculates about the cause of the accident should conspicuously label it as speculation."

Dr. Varadarajan's analysis, along with internal Union Carbide documents and conversations with workers, offers circumstantial evidence for at least one explanation of what triggered the accident.

There were 45 metric tons, or about 13,000 gallons, of methyl isocyanate in the tank that leaked, according to plant workers. That would mean the tank was 87 percent full.

Union Carbide's spokesman in Danbury said the tank contained only 11,000 gallons of the chemical, "which was well below the recommended maximum working capacity of the 15,000-gallon tank."

However, even that lower level—73 percent of capacity—exceeds the limit set in the Bhopal operating manual, which says: "Do not fill MIC storage tanks beyond 60 percent level." And the parent corporation's technical manual suggests an even lower limit, 50 percent.

The reason for the restrictions, according to technical experts formerly employed at the plant, was that in case of a large reaction pressure in the storage tank would rise less quickly, allowing more time for corrective action before a possible escape of toxic gas.

For 13,000 gallons of the chemical, the amount reported by the plant staff, to have reacted with water, at least 1.5 tons or 420 gallons of water would have been required, according to Union Carbide technical experts.

But those experts said that an analysis of the tank's contents had not disclosed water-soluble urea, or biuret, the normal product of a reaction between water and methyl isocyanate.

Furthermore, all of those interviewed agreed that it was highly unlikely that 420 gallons of water could have entered the storage tank.

HYPOTHESIS ON THE CAUSE

Those observations led Dr. Varadarajan and his staff to suggest that there may have been another reaction: water and phosgene.

Phosgene, which was used as a chemical weapon during World War I, inhibits reactions between water and methyl isocyanate because water selectively reacts first with phosgene.

But Dr. Varadarajan said his study had found that the water-phosgene reaction produced something not suggested in the Union Carbide technical manual: highly corrosive chloride ions, which can react with the stainless steel walls of a tank, liberating metal corrosion products—chiefly iron—and a great deal of heat.

The heat, the action of the chloride ions on methyl isocyanate, which releases more heat, and the chloride ions' liberation of the metals could combine to start a runaway reaction, he said.

"Only a very small amount of water would be needed to start a chain reaction," he said, estimating the amount at between one pint and one quart.

Beyond its routine checks for the presence of chloride, the corporate spokesman said in Danbury, Union Carbide specifies that tanks be built of certain types of stainless steel that do not react with methyl isocyanate.

He did not say whether the specified types of stainless steel react with chloride ions.

Dr. Varadarajan said his hypothesis had been confirmed by laboratory experiments in which the methyl isocyanate polymerized, or turned into a kind of plastic, about 15 tons of which was found in the tank that leaked.

OTHER CONTAMINANTS POSSIBLE

But that is not the only possible explanation of the disaster at Bhopal. Although water breaks down methyl isocyanate in the open air, it can react explosively with the liquid chemical in a closed tank. Lye can also react with it in a closed tank, but in the gas naturalizer, or scrubber, a solution of water and lye neutralizes escaping gas. Beyond water and lye, methyl isocyanate reacts strongly, often violently, with a variety of contaminants, including acids, bases and metals such as iron.

Most of those contaminants are present at the plant under certain conditions. Water is used for washing and condenses on pipes, tanks, and other equipment colder than the surrounding air. Lye, or sodium hydroxide, a base, is sometimes used to clean equipment. Metals are the corrosion products of the stainless steel tanks used to store methyl isocyanate.

Union Carbide Corporation's technical manual on methyl isocyanate, published in 1976, recognizes the dangers. It says that metals in contact with methyl isocyanate can cause a "dangerously rapid" reaction. "The heat evolved," it adds, "can generate a reaction of explosive violence." When the chemical is not refrigerated, the manual say, its reaction with water "rapidly increases to the point of violent boiling." The presence of acids or bases, it adds, "greatly increases the rate of the reaction."

SOURCES OF CONTAMINANTS

Investigators from both Union Carbide, India and its parent corporation have found evidence of at least five contaminants in the tank that leaked, according to nuclear magnetic resonance spectrographs that were obtained by The New York Times and analyzed by two Indian technical experts at the request of The Times. Among the contaminants, a senior official of the Indian company said, were water, iron, and lye.

The water came from the improperly sealed pipe that had been washed, workers speculated, or perhaps was carried into the system after it had condensed in nitrogen that is used to replace air in tanks and pipes to reduce the chance of fire.

In the days before the accident, workers said, they used nitrogen in an unsuccessful attempt to pressurize the tank that leaked on Dec. 3. The nitrogen is supposed to be sampled for traces of moisture, but "we didn't check the moisture all the time," Mr. Qureshi said.

During the same period, the workers said, they added lye to the scrubber, which is connected to the storage tanks by an intricate set of pipes and valves that are supposed to be closed in normal working conditions but that workers said were sometimes open or leaking.

Dr. Varadarajan said he was particularly troubled that, in the absence of what he considered sufficient basic research on the stability of commercial methyl isocyanate, it was stored in such large quantities. "I might keep a small amount of kerosene in my room for my stove," he said, "but I don't keep a large tank in the room."

The Union Carbide Corporation decided that it would be more efficient to store the chemical in large quantities, former officials of the Indian affiliate said, so that a delay in the production of methyl isocyanate would not disrupt production of the pesticides of which it is a component.

Many plants store methyl isocyanate in 52-gallon drums which are considered safer than large tanks because the quantity in each storage vessel is smaller. The chemical was stored in drums at Bhopal when it was imported from the United States. Tank storage began in 1980, when Bhopal started producing its own methyl isocyanate.

The Union Carbide technical manual for methyl isocyante suggests that drum storage is safer. With large tank storage, it says contamination—and, therefore, accidents—are more likely. The drums do not typically require refrigeration, the manual says. But it cautions that refrigeration is necessary for bulk storage.

TRAINING WAS LIMITED

Although the storage system increased the risk of trouble at Bhopal, the plant's operating manual for methyl isocyanate offered little guidance in the event of a large leak.

After telling operators to dump the gas into a spare tank if a leak in a storage tank cannot be stopped or isolated, the manual says: "There may be other situations not covered above. The situation will determine the appropriate action. We will learn more and more as we gain actual experience."

Some of the operators at the plant expressed disatisfaction with their own understanding of the equipment for which they were responsible.

M.K. Jain, an operator on duty on the night of the accident, said he did not understand large parts of the plant. His three months of instrument training and two weeks of theoretical work taught him to operate only one of several methyl isocyanate systems, he said. "If there was a problem in another MIC system, I don't know how to deal with it," said Mr. Jain, a high school graduate.

Rahaman Khan, the operator who washed the improperly sealed pipe a few hours before the accident, said: "I was trained for one particular area and one particular job. I don't know about other jobs. During training they just said, 'These are the valves you are supposed to turn, this is the system in which you work, here are the instruments and what they indicate. That's it.' "

IT WAS NOT MY JOB

As to the incident on the day of the accident, Mr. Khan said he knew the pipe was unsealed but "it was not my job" to do anything about it.

Previously, operators say, they were trained to handle all five systems involved in the manufacture and storage of methyl isocyanate. But at the time of the accident, they said, only a few of about 20 operators at Bhopal knew the whole methyl isocyanate plant.

The first page of the Bhopal operating manual says: "To operate a plant one should have an adequate knowledge of the process and the necessary skill to carry out the different operations under any circumstances."

Part of the preparatory process was "what if" training, which is designed to help technicians react to emergencies C.S. Tyson, a Union Carbide inspector from the United States who studied the Bhopal plant in 1982, said recently that inadequate "what if" training was one of the major shortcomings of that facility.

Beyond training, workers raised questions about lower employment qualifications. Methyl isocyanate operators' jobs, which once required college science degrees, were filled by high school graduates, they said, and managers experienced in dealing with methyl isocyanate were often replaced by less qualified personnel, sometimes transfers from Union Carbide battery factories, which are less complex and potentially dangerous than methyl isocyanate operations.

MAINTENANCE TEAM REDUCED

The workers also complained about the maintenance of the Bhopal plant. Starting in 1984, they said, nearly all major maintenance was performed on the day shift, and there was a backlog of jobs. This situation was compounded, the methyl isocyanate operators said, because since 1983 there had been 6 rather than 13 operators on a shift, so there were fewer people to prepare equipment for maintenance.

As a result of the backlog, the flare tower, one of the plant's major safety systems, had been out of operation for six days at the time of the accident, workers said. It was awaiting the replacement of a four-foot pipe section, they said, a job they estimated would take four hours.

The vent gas scrubber, the employees said, had been down for maintenance since Oct. 22, although the plant procedures specify that it be "continuously operated," until the plant is "free of toxic chemicals."

The plant procedures specify that the chiller must be operating whenever there is methyl isocyanate in the system. The Bhopal operating manual says the chemical must be maintained at a temperature no higher than 5 degrees centigrade or 41 degrees Fahrenheit. It specifies that a high temperature alarm is to sound if the methyl isocyanate reaches 11 degrees centigrade or 52 degrees Fahrenheit.

But the chiller had been turned off, the workers said, and the chemical was usually kept at nearly 20 degrees centigrade, or 68 degrees Fahrenheit. They said plant officials had adjusted the temperature alarms to sound not at 11 degrees but at 20 degrees centigrade.

That temperature, they maintained, is well on the way to methyl isocyanate's boiling point, 39.1 degrees centigrade, or 102.4 degrees Fahrenheit. Moreover, Union Carbide's 1976 technical manual warns specifically that if methyl isocyanate is kept at 20 degrees centigrade a contaminant can spur a runaway reaction. The manual says the preferred temperature is 0 degrees centigrade, or 32 degrees Fahrenheit.

If the refrigeration unit had been operating, a senior official of the Indian company said, it would have taken as long as two days, rather than two hours, for the methyl isocyanate reaction to produce the conditions that caused the leak. This would have given plant personnel sufficient time to deal with the mishap and prevent most, if not all, loss of life, he said.

The methyl isocyanate operating manual directs workers unable to contain a leak in a storage tank to dump some of the escaping gas into a 15,000-gallon tank that was to remain empty for that purpose. But the workers on duty said that during the accident they never opened the valve to the spare tank, and their supervisors never ordered them to do so. The workers said they had not tried to use the spare tank because its level indicator said it was 22 percent full and they feared that hot gas from the leaking tank might spark another reaction in the spare vessel.

The level indicator, according to the operators on duty that night, was wrong. The spare tank contained only 437 gallons of methyl isocyanate, not the 3,300 gallons indicated by the gauge.

Nonetheless, standard procedures had been violated. The operating manual says, "Always keep one of the storage tanks empty. This is to be used as dump tank during emergency." It provides that any tank less than 20 percent full be emptied completely.

The spokesman in Danbury said, "Our investigators did find some MIC in a spare tank," adding: "We do not know when and how the MIC got into the spare tank."

[From the New York Times, Jan. 30, 1985]

THE DISASTER IN BHOPAL: WORKERS RECALL HORROR

(By Stuart Diamond)

BHOPAL, INDIA, Jan. 24.—About 12:40 A.M. on Dec. 3, a worker at the Union Carbide pesticide plant here went to investigate a growing leak of methyl isocyanate. As he stood on a concrete slab above three large, partly buried storage tanks holding the chemical, the slab suddenly began to shake beneath him.

"There was a tremendous sound, a messy boiling sound, underneath the slab like a caldron," the worker, Mr. Dey, later recalled, "The whole area was vibrating."

He said he started to run away, heard a loud noise behind him, turned to look and saw 60 feet of concrete at least 6 inches thick crack. "The heat was like a blast furnace," he said. "I couldn't get within six feet of it."

GAS HEADS FOR THOUSANDS

He then heard a loud hissing sound, he said, and saw gas shoot out of a tall stack connected to the tank and form a white cloud that drifted over the plant and toward nearby neighborhoods where thousands of residents slept.

"I panicked," he said. "Everybody panicked."

Mr. Dey, a tall, soft-spoken man who has worked at the plant for five years, was among about a dozen workers and supervisors interviewed who were at the plant in the hours before and after a leak of methyl isocyanate, a chemical more toxic than cyanide that was used at the plant to make pesticide. The leak went out of control and caused the worst industrial accident in history, killing at least 2,000 people and injuring 200,000 in this central Indian city.

TOXICITY WAS UNDERESTIMATED

Nearly all the workers interviewed were making their first public statements since the disaster. They gave their accounts in Hindi through an interpreter; some declined to be identified.

Virtually all the workers said they knew methyl isocyanate was dangerous and some said they knew it could be fatal, but the dozen workers said they underestamated its toxicty. No one said he knew it could kill many people quickly.

The Union Carbide Corporation technical manual for methyl isocyanate is pointed on the hazards of the chemical and states that it "may cause fatal pulmonary edema," which is an accumulation of fluid in the lungs. But although the manual was distributed to managers that handle methyl isocyanate at the Bhopal plant and was seen by some of the workers there, most of the factory's employees had not read or understood it, according to former technical officials at the factory.

WORKERS EXPECTED SLOW DAY

The hours before the accident, the workers said, unfolded this way:

About 100 workers reported for duty on the eight-hour shift beginning at 2:45 P.M. on Sunday, Dec. 2.

The production plant to make methyl isocyanate had been shut down since Oct. 22, the workers recalled, and they were not particularly busy. In addition, they said, most major maintenance was now being done on the day shift during the week.

Outside the walled factory, it was a typical Sunday afternoon in the teeming old city of Bhopal, local residents later recalled. The open-air market was bustling; some of the vendors, as usual, were calling out their items for sale from carts and small booths on narrow streets.

Across the street from the factory, children played in the dirt outside the slum huts crammed together in a community called Jai Prakash Nagar.

Inside the factory, workers said, the pesticide Sevin was being produced. The Sevin plant, after having been shut down for some time, had been started up again about a week before but was still running at far below normal capacity, the workers said.

To make the pesticide, carbon tetrachloride is mixed with methyl isocyanate and alpha-naphthol, a coffee-colored powder that smells like mothballs.

The methyl isocyanate, or MIC, was stored in the three partly buried tanks, each with a 15,000-gallon capacity.

NITROGEN LEAKED OUT

Workers had not been able to use the methyl isocyanate in one of the tanks, No. 610, to make the pesticide for more than a week, they said, because they could not get the chemical out of the tank. Every time they tried to push it out and into the Sevin plant by pumping in nitrogen, they said, the nitrogen leaked out somewhere; they did not know where.

The methyl isocyanate supervisor on duty during the second shift of Dec. 2, the workers said, was Gori Shankar, who had arrived two months before from a Calcutta battery factory owned by Union Carbide India Ltd., which also owns the Bhopal plant. The company is owned 50.9 percent by the Union Carbide Corporation of Danbury, Conn.

About 9:15 P.M. Mr. Shankar telephoned one of the methyl isocyanate operators, Rahaman Khan, who was in the plant's canteen having tea, Mr. Khan recalled. Mr. Shankar could not be reached for comment on the workers' accounts, and plant officials declined to put The New York Times in touch with specific employees.

Mr. Khan said Mr. Shankar asked him to come to the MIC area of the plant and clean a pipe.

The pipe, about 25 feet long and 8 feet off the ground, led from a device that filtered crude methyl isocyanate before it went into the storage tanks, Mr. Khan said. Inside the pipe was a valve that had been closed.

VALVE HAD NOT BEEN SEALED

Mr. Khan and several other workers said Mr. Shankar told him to open a nozzle on the pipe and put a water hose in to clean the inside.

"He came along with me and stayed there while I did the procedure," Mr. Khan said. "I connected a hose to the pipe to be cleaned and opened a drain."

It was about 9:30 P.M., he recalled.

Mr. Khan said he noticed that the closed valve had not been sealed with a slip blind, a metal disc that is inserted into pipes to make sure that water does not leak through the valve. Valves were notorious for leaking at Bhopal, the workers said.

They knew, they said, that water reacted violently with methyl isocyanate. Page 67 of the MIC operating manual for Bhopal says: "Isolate the equipment positively by inserting suitable blinds. Isolation by valve or valves is not to be relied upon."

Mr. Khan said he and Mr. Shankar left the area while the pipe was being cleaned.

Unattended, water flowed into the pipe, out pipe drains and onto the floor, where it entered a floor drain, Mr. Khan and other workers recalled. The water was to continue to flow, the workers said, for about three hours.

According to Mr. Khan, it was the only pipe in the methyl isocyanate unit being washed during the second shift that day.

"I DIDN'T CHECK TO SEE"

"I knew that valves leaked," said Mr. Khan, who has a high school education and less training than the amount orginally established for methyl isocyanate plant operators.

"I didn't check to see if that one was leaking," he said. "It was not my job."

Many workers said they believed water from the unsealed valve was the most likely trigger for the accident that came hours later.

Shakil Qureshi, the methyl isocyanate supervisor on duty at the time of the accident, said later: "If water caused this accident, it is the fault of the management of Union Carbide. In fact, it is all our faults."

He said it would have been extremely difficult to check whether the valve was leaking; the plant, he said, did not have the proper instruments.

He said he found out later that there was no indication in notes on the daily maintenance log to insert a slip blind, although there was a note to wash the pipe.

"But the daily notes are always vague," he said.

PRESSURE OF GAS RISES BUT CAUSES NO ALARM

About 10:30 P.M., the workers on duty prepared for the change in shifts that was to occur about 15 minutes later, some of them recalled. Among other things, they said, they logged the pressure indicated on the gauge in the control room for MIC tank No. 610.

It was two pounds per square inch—normal, they said.

Operators said they did not record the temperature of the tank. "For a very long time we have not watched the temperature," one worker said. "There was no column to record it in the log books."

Operators said the temperature of the methyl isocyanate was usually nearly 20 degrees centigrade, or 68 degrees Fahrenheit, although the plant's operating manual specifies that it be kept below 5 degrees centigrade, or 41 degrees Fahrenheit. Sometimes in the summer, operators said, the methyl isocyanate storage tank temperature indicator went off the scale, which was 25 degrees centigrade at the maximum, or 77 degrees Fahrenheit.

About 11 P.M., Mr. Dey later recalled, he noticed that the pressure gauge for Tank 610 read 10 pounds per square inch—five times what it had been half an hour earlier.

Mr. Dey, who was in the control room and was the senior operator on duty, said he had thought nothing of it; it was still a relatively normal pressure.

Half an hour later, Mr. Qureshi, whose office is across the hall from the control room, had the same reaction, he later recalled—he thought one of the two readings was faulty. "Instruments often didn't work," he said. "They got corroded. Crystals would form on them."

About 11:30 P.M., workers in the methyl isocyanate area said, they realized that there was a methyl isocyanate leak somewhere: Their eyes began to tear. Detecting leaks by the effect of the gas on the eyes was standard procedure at the plant, and at least one leak a month was detected this way at the plant, they said.

"We were human leak detectors," Mr. Dey said. The practice violated procedures laid out in the technical manual.

The workers began to look for the source of the leak, they recalled.

V.N. Singh, one of the workers, said he and the others walked around the MIC structure, which looks like a small refinery, and spotted a drip of liquid about 50 feet off the ground and some yellowish-white gas accompanying the drip.

"It was a small but continuous drip," he said.

While the other workers kept looking at it—they later said they thought they had found the source but were not certain—Mr. Singh said he went by himself to inform Mr. Qureshi.

He said it was about 11:45 P.M.

According to Mr. Singh, he told Mr. Qureshi of a leak of methyl isocyanate, although this is in dispute: Mr. Qureshi later said he had been told only of a water leak.

Mr. Singh recalled that Mr. Qureshi told him he would deal with the leak after the next tea break, scheduled about 12:15 A.M.

Until tea time, the workers said, they continued to inspect the area. Then all of the MIC workers had tea together in the control room about 100 feet away from the storage tanks. The workers said they talked about the leak, among other things, over tea.

WORKERS REALIZE IN PANIC LEAK IS OUT OF CONTROL

It was in the five minutes after the tea break ended at 12:40 A.M., the workers said, that the enormity of the accident became known. They began to panic both because of the choking fumes, they said, and because of their realization that things were out of control.

"Things were happening very fast," Mr. Dey said.

First, Mr. Dey said he glanced at the temperature gauge for Tank 610 in the control room and noticed that it had risen above 25 degrees centigrade, or 77 degrees Fahrenheit, the top of the scale.

The pressure gauge for the tank, meanwhile, was rapidly moving toward 40 pounds per square inch, the point at which an emergency relief valve on the MIC tank bursts open, according to the workers.

Within seconds, Mr. Dey said, he went to Mr. Qureshi's office and told him that the pressure in Tank 610 was rising rapidly.

He then rushed to the storage tanks to investigate, he said, and saw the concrete over the tanks crack as MIC turned from liquid to gas and shot out the stack, forming a white cloud. Part of it hung over the factory, the rest began to drift toward the sleeping neighborhoods nearby.

Mr. Dey raced back to tell Mr. Qureshi in the control room, he said, "I told Qureshi there was a massive MIC leak that could not be controlled."

Mr. Dey said he looked at the pressure gauge in the control room for Tank 610 again; the indicator was off the scale, above 55 pounds per square inch, he said.

It was about 12:45 A.M., he said.

At that time, Mr. Qureshi later recalled, he ordered all water sources in the area shut off and ordered water sprayed on the leak to break down the MIC. It was at this point, the workers said, that the water used to clean the pipe on the previous shift was, after about three hours, turned off.

But the leak did not stop, Mr. Qureshi recalled, and the effect of the MIC became more pronounced by the minute—workers eyes began to hurt and tear more excessively; some began to cough, they said.

Someone sounded an alarm by breaking its glass, workers said. Mr. Dey said he made an announcement on the factory loudspeaker that there was a large MIC leak and that people should leave.

Workers were running around in panic, shouting "massive MIC leak," Mr. Dey recalled.

Within a minute or so, the fire brigade arrived on trucks and turned on several hydrants to put a water curtain around the escaping gas, the workers said. But the curtain, they said, reached only about 100 feet high while the gas was escaping from the top of a stack 120 feet high and was shooting another 10 feet into the air.

It was about 12:50 A.M.

Mr. Dey said he then turned on the vent gas scrubber, a device designed to neutralize escaping toxic gas. The scrubber had been under maintenance; the flow meter indicated there was no caustic soda flowing into the device, Mr. Dey said.

He said it was not clear to him whether there was actually no caustic soda in the system or whether the meter was broken. Broken gauges were not unusual at the factory, workers said.

In fact, the gas was not being neutralized but was shooting out the vent scrubber stack and settling over the plant.

One reason the scrubber was not working, technical experts later said, was that the temperature and pressure of the gas far exceeded the design limits of the scrubber. The temperature of the escaping gas was at least 121 degrees centigrade, or 250 degrees Fahrenheit, according to the plant's technical specifications for the valve that burst on the storage tank. The MIC operating manual for the Bhopal plant says the scrubber should not be operated above 70 degrees centigrade, or 158 degrees Fahrenheit, for extended periods.

Meanwhile, K. V. Shetty, the plant superintendent for the shift, had come racing over from the main gate on a bicycle, workers said.

"He came in pretty much in a panic," Mr. Dey said. "He said, 'What should we do?'"

Mr. Shetty, who declined to be interviewed, was on the administrative and not the technical side of the factory, the workers said.

Inside the factory, the white cloud of methyl isocyanate engulfed the production plant and started wafting toward the control room.

Nearly all members of the plant staff began to leave—everyone but Mr. Qureshi, Mr. Shetty and the six MIC plant operators working that shift, the workers said. Those fleeing looked at the wind direction indicator, a large sock on a pole, and ran into the wind, the workers later recalled.

Four buses were parked by the road on which workers ran to escape, the workers recalled. There was a provision for drivers to man the vehicles and drive them to the nearby neighborhood, loading some residents aboard and having the rest follow, workers said. But the buses stood idle, the workers said.

"Everybody was busy running away," one operator said.

CONTROL ROOM ENGULFED AS ALL EFFORTS FAIL

About 1 A.M., Mr. Qureshi said, he telephoned S. P. Choudhary, the assistant factory manager. The workers said Mr. Choudhary said to turn on the flare tower, which is designed to burn off escaping gas.

Mr. Qureshi gave the instruction to workers, they recalled, and Mr. Dey said he told Mr. Qureshi that turning on the flare with all that gas in the air would cause a huge explosion.

Mr. Dey said Mr. Qureshi then remembered that a four-foot, elbow-shaped piece of pipe was missing from the flare anyway. It had corroded and was to be replaced.

The workers said they considered other alternatives, such as dumping the escaping gas into a spare storage tank. One of the three tanks, No. 619, was supposed to be empty, but it was not; it also contained MIC, as did No. 611, the workers said.

The workers said they then grabbed their oxygen masks and tanks.

About 1:30 A.M., MIC began to engulf the control room and the adjoining offices, Mr. Qureshi recalled. He said he could not find an oxygen mask and cylinder in his office. Someone had taken his, he said, so he ran out of the control room and ran off.

"I thought I was going to die," he said.

Mr. Dey put on his oxygen gear and went to look for Mr. Qureshi in the MIC cloud but could not find him.

"I couldn't see two feet in front of me, the cloud was so thick," he said.

In the meantime, Mr. Qureshi recalled, he had found a clear area, scaled a six-foot fence topped by barbed wire and had broken his leg as he landed. He was taken to a hospital later that morning.

Mr. Dey said he went upwind and waited, periodically putting on his oxygen gear to go back to the control room and check the instruments.

At 2 A.M., he said, the pressure and temperature gauges were still off the top of their scales. He continued to go back and forth, and when he checked the area at 2:30 A.M., he said, the gas that had begun shooting out of the stack nearly two hours earlier had stopped coming out.

Jagannathan Mukund, the factory manager, arrived at the plant about 3 A.M. and sent a man to tell the police about the accident because the phones were out of order, the workers said. They said the police were not told earlier because, they said, the company management had an informal policy of not involving the local authorities in gas leaks.

Meanwhile, people were dying by the hundreds outside the factory. Some died in their sleep. Others ran into the cloud, breathing in more and more gas and dropping dead in their tracks. Thousands of animals also died. By dawn, doctors at nearby hospitals would be piling bodies in spare rooms for lack of space.

By 3:30 A.M., the gas had dispersed from the MIC plant.

Mr. Dey said he went back into the control room and watched it continue to float out over nearby communities.

He sat there, he said, until the middle of the next afternoon.

"There was," he said, "nothing else to do."

A STAGE SET FOR A DISASTER

BHOPAL, India, Jan. 24.—The dozen workers interviewed after the Bhopal accident later maintained that the stage for disaster had already been set when they reported for duty at the sprawling chemical plant on Dec. 2, a mild and relaxed Sunday afternoon in the central Indian city.

A refrigeration unit designed to keep the methyl isocyanate cool and nonreactive had been shut off and chemical was warmer than allowed by the plant's operating manual, they said. The staff and its training, they said had been reduced, and important instruments, including pressure gages, were unreliable.

At the same time, the workers said, maintenance at the plant had been curtailed and new supervisors and operators were in key positions. A cost-cutting program at the money-losing plant, they contended, was jeopardizing safety.

Two of the plant's major safety systems to handle escaping gas—a gas neutralizer and a flare tower to burn it off—were not designed to withstand pressure anywhere near that of the methyl isocyanate in this accident, technical experts said. A water spray system was not high enough to reach and contain the escaping methyl isocyanate, the workers said.

The ill-fated methyl isocyanate storage tank had been overfilled, with the consequence that the pressure would rise faster in an accident, the experts added.

In all, there were already more than half a dozen violations of plant procedures by the day of the accident; more were to occur during the accident itself, according to workers, technical experts and former Union Carbide officials.

Company and plant officials and managers in the United States and in India generally declined to comment on such actions and allegations. They characterized any suggestion of the causes as speculation.

[From the New York Times, Jan. 31, 1985]

DISASTER IN BHOPAL: WHERE DOES BLAME LIE?

(By Robert Reinhold)

BHOPAL, INDIA, Jan. 24—A few weeks before the gas leak at the Union Carbide factory, it had been granted an "environmental clearance certificate" by the state pollution control board.

It was a routine clearance required by the central Government of India, and it was readily granted since, in the words of a board official, "only slight modifications were needed" in the plant's emission controls.

In fact, the plant was soon to suffer a chemical reaction that spewed lethal methyl isocyanate gas across this central Indian city in the early hours of Dec. 3, leaving more than 2,000 dead and 200,000 others injured.

The aftermath has brought much soul-searching and finger-pointing over who was ultimately responsible for the tragedy. Plant workers, technical experts and former Union Carbide officials have described a deterioration of safety standards at the plant that, they say, helped provoke a disaster.

The tragedy has also led many to accuse the state pollution board—as well as many other agencies of the state and central Government responsible for monitoring industry—for not having adequately monitored the plant.

Their failure, many have said, has raised questions about the ability of India, which is already an industrial power, and its fast-developing states to regulate the new industry they seek. And it has led many to say that the responsibility for the deaths must be shared by the Government.

ENFORCEMENT LEFT TO STATES

Under Indian law, industrial licenses are issued by the Ministry of Industry of the Government in New Delhi. But enforcement of worker safety, environmental and other rules is left largely to the state governments.

The department of labor in Madhya Pradesh, the state of which Bhopal is the capital, employs 15 factory inspectors to monitor more than 8,000 plants spread over the vast state, the largest in India.

According to an official of the inspector's office, they lack the most basic instruments, even typewriters and telephones in some regional offices, and must travel by public bus and train on their rounds.

The Bhopal office, which is reponsible for monitoring the Union Carbide plant, has only two inspectors, both mechanical engineers with little knowledge of chemical hazards.

Inspection records show that they made many visits to the plant after internal leaks and other mishaps, but recommended only minor remedial recommendations, generally urging the company to follow its own operating procedures more closely.

Similarly, the Madhya Pradesh air and water pollution control board has acquired not a single instrument to measure air pollution, nor has it hired any new staff, since the central Government passed its first air-pollution law more than two years ago.

Almost all government officials interviewed maintained that they were not responsible for looking after the methyl isocyanate tank that leaked, and they pointed the finger elsewhere.

An official of the state labor department's division of industrial health and safety said the factory inspectors' job was limited to looking after safety devices to protect workers.

"We do not design, maintain and operate plants," he said. "We only check to see there are enough protective masks and safety guards."

Similarly, U.K. Tiwari, chairman of the pollution-control board, said his agency lacked responsibility because methyl isocyanate, called MIC, was not a normal emission of the factory and therefore was not monitored at all. Indeed, he said, the factory's regular noxious emissions were "almost nothing."

"This was an accident," he said. "In the normal working of the factory there was almost no emission of this gas. Normal monitoring would not have foreseen this at all. This was a failure of safety equipment."

The top official of the Madhya Pradesh government is the Chief Minister, Arjun Singh, a politician who has held the job since 1980. That is when Union Carbide started manufacturing MIC, which is used to make all the pesticides produced at the factory, a few miles from Mr. Singh's house.

Mr. Singh was himself affected by the gas at his large home in the new part of Bhopal. In an interview there, he contended that the burden rested with the company to inform the local authorities about potential hazards.

"It is the basic responsibility of the company to make the community aware of it," he said. "I have not seen anything so far to show this was done."

SOME COMPANY OFFICIALS FACE CRIMINAL CHARGES

So far, Mr. Singh's Government has brought criminal charges against several officials of Union Carbide, including Warren M. Anderson, chairman of the Union Carbide Corporation of Danbury, Conn., and Keshub Mahindra and V. P. Gokhale, chairman and managing director respectively of Union Carbide India Ltd. The Union Carbide Corporation owns 50.9 percent of Union Carbide India, which owns the Bhopal plant.

In addition, charges have been brought against Jaganathan Mukund, the factory manager, and S. P. Choudhary, the assistant factory manager. All have been released on bail.

Mr. Singh has also accepted the resignation of his labor minister, Sunder Patidar, and dismissed the chief inspector of factories, C. P. Tyagi, who Mr. Singh said had renewed the factory's license annually without acting on reports of safety lapses from the labor department.

Did the Chief Minister accept any personal responsibility?

"In a way I am responsible for everything," he replied. "But there must be some level at which the persons most closely concerned have to have greater responsibility than me."

He agreed that Madhya Pradesh's industrial and environmental safeguards were deficient.

"Most of these rules were framed quite a long way back," he said. "They certainly need updating in view of new processes."

If it was the plant management's duty to inform the public about the nature of their plant, they clearly failed to discharge it.

Not even Dr. M. N. Nagu, director of public health for the state, knew anything about the poison gas that was to leave thousands of Bhopal residents, including himself, choking, gasping for breath and half blinded.

Indeed, even with the first bodies piling up at Hamidia Hospital, he said, a factory doctor told him that the gas was not lethal and that it caused only eye and lung irritation.

"They said it's not so toxic to create any problem," Dr. Nagu said.

"I said, 'What are you talking about—people are coming in dying.' "

MANY OFFICIALS KNEW LITTLE OF THE CHEMICAL

Nor did Bhopal's part-time Mayor, Dr. R. K. Bisarya, also a physician, know much about MIC. Neither did Ranjit Singh, the chief administrative officer of the Bhopal district and the man chiefly responsible for contingency plans in case of disasters. There was none in case of a leak from Carbide.

"I had no idea," he said. "I knew they made pesticides, but I did not know what the ingredients were, and I have never heard of a compound called MIC."

The police superintendent, Swaraj Puri, said he first learned of MIC, with his eyes and lungs burning, at about 3:30 A.M. on Dec. 3, when he was informed of it by K. V. Shetty, the plant superintendent, for the shift four hours after the leak began.

"We made him spell it," Mr. Puri said.

These officials said nobody at the company suggested a simple antidote of covering the face with a wet cloth. Had that been known in advance, they said, many lives might have been saved.

The seeds of the accident were planted in 1972 when, under Government pressure to reduce imports and loss of foreign exchange, the company proposed to manufacture and store MIC at the plant.

What the company told the central and state Governments about the potential hazards of this process is unclear, since all records have been impounded by an official inquiry.

The New Delhi Government's Ministry of Industry granted the MIC license, No. C/11/409/75, on Oct. 31, 1975.

This was just two months after the issuance of the Bhopal development plan on Aug. 25, 1985. That plan, which had the force of law, required that "obnoxious industries," including manufacture of pesticides and insecticides, be relocated to an industrial zone 15 miles away.

"Obnoxious industries which are likely to pollute the atmosphere are often located on the leeward side, so as to save habitated areas from harmful effects of such industries," the 1975 report stated, adding that at the proposed new industrial area, "the prevailing winds will carry obnoxious gases away from the city area."

The plan was not followed. The factory stayed, and soon slum dwellings and even middle-income housing were being built nearby.

The development plan was devised under M. N. Buch, then commissioner and director of town and country planning for the state and a former secretary of environment and administrator of the Bhopal municipal corporation.

In an interview, Mr. Buch, who recenlty resigned from the Indian administrative service, said he ordered the Carbide plant to relocate in 1975.

"The risks of a pesticide formulation plant are very different from a plant that manufacturers the basic material for pesticides," he said. "with such a plant, it no longer becomes a question of whether people should live across the street. It becomes a question of whether people should live within many miles of the plant.

"I would not have permitted the plant to locate there," Mr. Buch said, adding that the plant was responsible for the deaths. But he also charged that the Government carried an "equivalent vicarious responsibility" for what he called its failure to monitor the plant and to follow the master plan.

The plan called for the Carbide site to be converted to housing and light commercial use. It also called for 2,560 hectares, or 6,325 acres, of new housing by 1994, so as to eliminate the shanty slums that crop up everywhere.

So far, he went on, only a few hundred hectares of housing have been built. "Therefore, they allowed these slums to come up," he said.

Mr. Buch said he did not know why his order to relocate the plant was ignored; he said that soon after, he took another job for unrelated reasons.

N. V. Patwardhan, the current director of the town-country planning commission, declined to comment, saying the matter was under judicial inquiry

HOUSING SPRANG UP AROUND THE NEW PLANT

In any case, as Carbide built its MIC unit, the population in the shadow of its plant grew rapidly.

The local government granted construction permits on June 5, 1976, seven months after the MIC license was granted, to Sant Kanwar Ram Nagar, a housing development near the plant, and construction loans were given by the Madhya Pradesh housing finance corporation a year later. Some individual building permits were granted in the neighborhood as recently as 1983.

Other housing sprang up, all with government sanction. At the same time, unauthorized slums inched closed to the Carbide factory. One, Jai Prakash Nagar, spread out right in front of the main gate of the factory, giving leaky shelter to about 700 families and 3,000 people at the time of the accident.

If the nontechnical political and civil authorities in Bhopal were unaware of the latent volcano in their midst, why did the technical and industrial agencies involved in licensing and monitoring the plant also suspect nothing?

And why was so little action taken in the face of several signs, including one fatal accident at the plant in 1981, that all was not well inside the plant?

Industrial licenses are issued by the Ministry of Industry in New Delhi, after consultation with several other agencies, such as in this case the Ministry of Chemicals and Fertilizers, the directorate a general of technical development, the Ministry of Agriculture and its Central Pesticides Board, as well as the Madhya Pradesh state government.

Just what Union Carbide disclosed about the hazards of MIC production when it applied a dozen years ago is unclear. The application predated India's air and water pollution laws. Also unclear is how much scrutiny the central Government gave the application.

"This is a big weakness in the process," said a former official of the Department of Industry in New Delhi. "The depth of scrutiny is so shallow and so superficial. I would not be at all surprised if they did not realize what it was about, and just said it would generate employment in Madhya Pradesh."

Even so, an official of the Madhya Pradesh department of industries said there wree some in the department who objected to the plant location. But, be added, they were overruled by nontechnical people and the plant applications were recommended to the cental Government.

"It is not carbide's fault," he said "We did not tell them what to do. They never refused to install what we asked. They were never advised what was needed."

Under current central Government rules, all letters of intent to issue an industrial license to a company with foreign collaboration require the company to take "adequate steps" to prevent air, water and solid pollution, as well as "adequate industrial safety measures" to the satisfaction of the state government involved.

The letter also stipulates that no new or expanded industrial activity should take place within the urban limits of cities of over one million or within the municipal limits of cities over 500,000 population. Bhopal's population today is estimated at 800,000.

Only last June 21, less than six months before the accident, the Ministry of Industry in New Delhi ordered that no license should be granted unless the state director of industries confirmed that the site has been "approved from the environmental angle."

But none of this was in place in 1975, when the plant got its license.

Once licensed by the central Government, the Carbide factory was theoretically monitored by the state government under four main national laws: the Factories Act of 1948, the Insecticides Act of 1968, the Water Act of 1974 and the Air Act of 1982.

Thus far, the Madhya Pradesh government has placed the burden of blame on its labor department, which enforces the Factories Act, aimed mainly at providing safe working conditions for plant workers, rather than protecting the general public.

The dismissal of the chief factory inspector, Mr. Tyagi, has incensed the factory inspectors' office, based in Indore, 120 miles southwest of Bhopal.

Mr. Tyagi declined to comment, but another member of the inspectors' office described the conditons under which factory inspectors must operate in Madhya Pradesh with the proviso that he not be identifed.

Each inspector, he said, has responbility for more than 150 factories, triple the standard recommended by the International Labor Organization.

Each is given a quota of 400 inspections a year, to be done in only 200 or so working days. Moreover, he added, they are expected to travel about this large state by public transportation.

"Factories are almost always located outside of cities," he said. "Often we must ask for a car from the factory owner to get there. We go in his vehicle, and then sometimes we must prosecute him."

Frequent requests or better support from the state government have gone unheeded, the staff member said. They have no hygiene laboratory and few instruments.

"We don't even have instruments to collect samples," he said. "All we can say is there is dust and you stop it. It is very difficult to prove in a court of law because we don't know what the normal level is."

Moreover, inspectors have little authority to order that unsafe conditions be remedied, apart from going to court. That process often takes years and then the fines are minimal. The official recalled a recent case in which factory managers were fined 2.50 rupees each, or 20 cents, for each infraction.

Much of the machinery purchased by textile, cement and other factories in the state is antiquated and cheaply made, he said, and management usually tries to get away with whatever it can. The inspector comes into the picture only after production has begun.

The Indian Factories Act explicitly authorizes the individual states to make rules requiring written previous permission from the chief inspector of factories before a factory site is chosen and construction begun. More than 36 years after the act was passed, the Madhya Pradesh government has still not written such rules.

"The industries department never tells the factories they must get a license from us," the staff member of the inspectors' office said. "We must tell them."

As for Union Carbide, he said that by comparison to the safety violations committed by other plants in the state, Carbide was considered almost a model citizen. It had only one fatal accident in recent years, while one steel plant had 25 in one year and deaths were common in other plants, he said.

Carbide was never prosecuted for its lapses.

Since the MIC unit opened in 1980, the factory inspectors did periodically check the three MIC storage tanks.

But they did not have the proper equipment, so they relied on ultrasonic tests performed by the company itself. The inspectors also checked to determine that the safety valves on the tanks would open to release gas in case of a pressure buildup.

The official noted with an ironic smile that they worked all too well Dec. 3.

After the fatal accident on Dec. 24, 1981, in which an illiterate worker died after taking off his face mask when splashed with phosgene, the Central Labor Institute in Bombay, operated by the New Delhi Government, sent an investigator.

The director of the institute, the official said, concluded that the plant's safety equipment was of international standards and that the plant posed no significant problem.

Nonetheless, the death of the worker, Ashraf Mohammad Kahn, prompted an investigation by the state labor department. It appointed Dr. S. Siddiqui, a professor at the local science college, Vigyan Mahavidyalaya, on Feb. 10, 1982.

He delivered his report on March 5, 1984, and it concluded that the worker died from his own mistake, but also that there was poor coordination between the production and the maintenance staff, which allowed him to open a pipe that was not cleared of deadly phosgene.

The Siddiqui report went unattended by the state labor department for seven months. Even a reminder from the Chief Minister on Dec. 11, more than one week after the Dec. 3 leak, brought no immediate response, according to his office, and the matter remained "inert" for more than a week more.

For that, several officials of the labor department, including its secretary, Arun Kumar, were suspended.

The current secretary of both the state labor and industries departments is Manish Bahal. He declined substantive comment on allegations of lapses in his departments, saying he did not want to pre-empt the judicial inquiry.

But he said the manufacturing process was left to companies. "We are not there to check manufacturing," he said. "We are not there to run the factory."

An inquiry into Mr. Khan's death was also undertaken by the state agriculture department in 1982 at the request of his brother. The inquiry was completed last summer and reached conclusions similar to those of Professor Siddiqui. But no action was taken until after the disaster in December.

The spokesman for Chief Minister Singh, Sudeep Banerjee, said the state planned soon to prosecute Union Carbide under the Pesticides Act, which gives the states authority to protect workers involved in the manufacture, formulation, transportation, distribution and application of pesticides.

Neither did the environmental authorities pay close attention to the plant. When the MIC unit was added in 1980, the plant was required to build a 22-acre solar evaporation pond for its toxic waste, so that its toxic effluent was theoretically nil.

In fact, since the factory was running at only 30 percent of capacity, its production of waste was much less than expected.

PLANT'S POLLUTION NOT CONSIDERED MAJOR

But the state pollution control board did raise objections about the discharge from Carbide's storm drain, which emptied into a drainage ditch outside the plant.

Monthly samples, tested for biological oxygen demand, pH relative acidity and other indicators, showed it to be polluted, though the board never tested it for toxicity, a board worker said.

The worker said the plant was "given one or two reminders, but they never did anything about it." He said the plant's own data almost always was below the acceptable levels.

Compared with the extensive pollution caused by other industries, the drain was "not considered a major problem," he said, and no court action was taken.

Still, a few years ago, several animals died near the Carbide drain. The company paid the owners, and there was little further worry about it.

"After that it became routine that if an animal died of old age the owner would throw it in the effluent and ask Carbide for money," the pollution worker said.

The state air and water pollution control board operates with a staff of 262 in five regional offices, with a laboratory here in Bhopal. It is charged with monitoring "outlets for sewage of trade effluent" into streams and wells.

This means it must regularly cover not not only 200 major and medium-sized industries but also 90,000 smaller ones, as well as municipal waste discharge.

Moreover, unlike environmental agencies in the United States, the board has no authority to order a polluter to desist. It must, like the factory inspectors, go through a long court procedure.

A Bhopal journalist, Raajkumar Keswani, had been warning of potential disaster at the plant in his now defunct Hindi weekly, Rapat.

These warnings, along with complaints from unions representing Carbide workers, resulted in a debate in the Madhya Pradesh legislative Assembly on Dec. 21, 1982.

One member suggested that the plant should be moved to a "safer place."

With Chief Minister Singh present, the then state labor minister, Tara Singh Viyogi, gave this response:

"Mr. Speaker, this plant was established here in 1969 with an investment of 250 million rupees [$20 million at current rates]. It is not a small piece of a stone that I can shift from one place to another."

He added, "There is no danger to the city, nor do I find any symptoms of it."

Mr. Viyogi, now a textile labor union leader in Gwalior, about 200 miles north of Bhopal, denied in an interview any responsibility for the accident.

"I never imagined it," he said. "It was beyond my thinking that it could happen."

He said he had personally visited the plant three times and was satisfied with its safety measures, feeling that any leak could be stopped—if the measures, he said, were used properly.

"My information was not wrong," he said. "What I said at the time was that if the instruments worked properly and they used them properly, it would have stopped the leak."

[From the New York Times, Feb. 3, 1985]

THE DISASTER IN BHOPAL: LESSONS FOR THE FUTURE

(By Stuart Diamond)

BHOPAL, INDIA.—In this teeming central Indian city where an industrial gas leak in December killed more than 2,000 people, the problems and dilemmas faced by multinational companies in developing countries come into sharp focus.

Vendors sell, dried cow-dung for fuel while nearby factories install automated solar-energy devices. A business executive does financial statements on a computer while outside his window two men clothed in little more than rags try to push a rice-laden wooden cart out of a drainage ditch.

At the airport on the edge of town, a jet lands on a wavy asphalt runway; the luggage is sometimes carried away on a cart pulled by a bullock. A new television transmission tower looms over the countryside; in front of it, a woman in a sari carries gravel for construction in a basket on her head.

OLD WAYS NOT REPLACED

The advances that have made India an industrial power have, in most areas, not replaced previous methods. Instead, the new technology forms a veneer on a continuum of life styles and perceptions that stretch into the past.

In this setting, the Union Carbide Corporation and its Indian affiliate, Union Carbide India Ltd., built in Bhopal a complex pesticide factory where, on Dec. 3, a leak of methyl isocyanate caused the worst industrial accident in history. In addition to those killed, 200,000 people were injured.

The accident, many Indian technological experts and others say, has raised questions about doing business in the third world—not only for the multinational companies but for the host countries as well.

'A LOT OF RISKS'

"Western technology came to this country but not the infrastructure for that technology," said Dr. S.R. Kamat, a prominent Bombay expert on industrial health and the hazards of development.

"A lot of risks have been taken here," he said. "Machinery is outdated. Spare parts are not included. Maintenance is inadequate. Bhopal is the tip of an iceberg, an example of lapses not only in India but by the United States and many other countries."

Since the accident, scientists, Government officials, policy makers, medical experts, cultural specialists and business leaders—including officials from Union Carbide—have converged on the city to glean the lessons of Bhopal. The city, they say, has become a laboratory for the study of how industrial companies can better conduct business in the third world—and what steps might be taken to avoid a repetition of what happened here.

Interviews with more than a hundred specialists, officials, residents of Bhopal and others suggest that several lessons have already begun to emerge. These are some of the issues being discussed:

Hazardous facilities often pose added risks in developing nations, where skilled labor and public understanding are often lacking. Special training is needed to compensate for these extra risks.

Public education is critical in developing countries, where people often do not understand the hazards of toxic substances. Repeated drills and clear warning signals are needed.

The more rural areas of the developing world should not be used to test complex new technology.

A sense of urgency about all safety problems and attention to worst-case possibilities—routine in industrial countries but often not transferred to developing countries—should be part of worker training, especially in plants with a high turnover of personnel.

The company headquarters should audit its plants in developing countries frequently, perhaps more often than it audits plants at home.

Sophisticated backup safety systems, often installed in industrial nations, are needed to compensate for lapses in training and staff in developing nations, where they are needed more.

Company executives should be technically—not just administratively—trained in businesses that use toxic materials; such training can compensate for a lack of technical know-how in the local plant staff.

Many areas of the developing world are growing rapidly and without zoning laws. Suitable buffers should be placed around the factory to prevent the dangers of crowding.

Cultural differences between foreign and host countries should be considered. If preventive maintenance is a new concept it, should be more thoroughly taught.

Host governments should closely and continually inspect hazardous factories and their managements, enforcing strict and quick sanctions for safety lapses.

In making agreements with multinational companies, the governments of developing countries should consider only those technologies that can be safety handled in the long run. It may be necessary to change laws that mandate turning factories over to local control completely.

INDIA IS STILL EAGER TO INCREASE TECHNOLOGY

Many technological experts note that India has tried to use new technology to solve its problems of food and medical care and that companies such as Union Carbide have been well-regarded as helping India to achieve those goals.

Thus, despite the anger generated by the Bhopal accident, it is clear, they say, that multinationals do not face wholesale expulsion from India—although there is talk among state and central Government officials of nationalizing the Bhopal plant, which is on Government-leased land.

And while there have been official statements that the Bhopal plant will not again make hazardous materials, many here believe that the plant will reopen. The jobs are needed in a country where unemployment is high and there is no welfare system; those without jobs often must beg or face starvation.

"People here say: 'We have already lost 2,000 lives. Must we lose 2,000 jobs too?" said Paul Shrivastava, a native of Bhopal and an associate professor of management at the New York University Graduate School of Business Administration, who returned home to study the accident.

Officials in India note that multinational companies provide the country with technology, skill, capital and equipment that might otherwise take years to develop indigenously. The Government, they say, is keen to continue joint ventures between Indian interests and foreign companies.

India and other countries provide multinational companies with benefits in return, according to a wide variety of studies in the United States. The companies have gained large new markets and have often been able to produce products inexpensively because of a cheap labor force and fewer requirements to install expensive environmental and worker-protection equipment, those studies said.

In December, the Government approved 194 projects between Indian and foreign companies, according to the Indian Investment Center, a Government-sponsored group that tries to encourage investment.

Those included, it said, 47 from the United States, the most of any country. The projects involved production of batteries, computer parts, steam turbines, oil-drilling tools and even a plant to make phosgene, a poison that is used in making methyl isocyanate, or MIC.

In the last two years, agreements have been reached for four new Union Carbide plants: a battery plant; one to produce calcium carbide, which is used in making battery materials; one to bottle specialty gases such as helium and argon, and one to make equipment that separates oxygen from the atmosphere for bottling.

TECHNOLOGY SPREAD THIN ON AN ANCIENT CULTURE

There are many success stories of advanced technology in India, many specialists say. The country's airlines run a busy and virtually accident-free schedule, nuclear reactors supply electricity, Indian scientists and engineers do advanced research in chemistry, physics and biotechnology.

The country has the third-largest number of technical students in college in the world, after the United States and the Soviet Union, according to a United Nations study two years ago.

But the country has 750 million people and many technological industries to support, the Indian experts say. The considerable technical skill, they say, is spread thin.

A recent study, "Multinationals and Self-Reliance," by the Indian Institute of Public Administration in New Delhi found that of 1,695 top employees at seven leading foreign drug companies here, more than a quarter were only high school graduates.

The new Prime Minister, Rajiv Gandhi, has said that he wants more technology to help his country develop. Last month a study by the Birla Institute of Scientific Research, a respected private research unit, concluded that the growth of India's technological progress was much less than that in many other countries. It said India had the financial resources to grow faster.

Dr. Shrivastava, the New York University professor, said the ability to handle new technology here is more a question of training and management than basic ability and discipline.

"Much more attention must be paid to the support systems for new technology and the culture in which it exists before the technology is located here," he said.

Bhopal has grown swiftly since it was made the capital of the state of Madhya Pradesh in 1956. But there is only one telephone for every thousand people, according to state officials; most of the population has running water for only a few hours a day, and there are few street signs, traffic lights, washing machines, hair dryers, computers or automated equipment of any kind.

On the narrow, crowded streets of Bhopal's old city, 2,000 years of civilization fight for space. Cows, goats, scooters, buses, cars, carts, bicycles, water buffalo, three-wheeled taxis, horse-drawn carriages, men in business suits and women in tribal dress travel in both directions on 12-foot-wide thoroughfares hemmed in by shops with wares in the line of traffic.

When Union Carbide decided to build a

factory in Bhopal, many people familiar with its development say, the city was a technological ingenue.

"When we set up this plant, we used workers just out of the agricultural age," said Kamal K. Pareek, the senior project engineer during the building of the factory's MIC facility in the late 1970's. "You just can't afford to do anything wrong in a factory like this. There are safety devices, but a high level of skill and understanding is needed to use them properly.

"What we needed," he continued, "were people who had grown up with technology, not workers who have had technology imposed on them by economic circumstances."

He and other technology experts said there was a big difference between someone educated in sciences and someone who has grown up understanding technology.

"People here have the ability to operate by rote, and the capacity for providing rote skills exists," Dr. Shrivastava said. "But that is not the same as saying that new technology can be handled in all its dimensions."

Key among the problems is the lack of emphasis on preventive maintenance, the Indian technological experts said. "The idea of spending money now to save money later is a concept completely alien in what is basically a subsistence economy," said Kiran Rana, a chemical engineer and native of Kashmir in northern India who now lives and works in the United States.

"We Indians start very well," Mr. Pareek said, "but we are not meticulous enough to follow up adequately."

ACCIDENT MAY CHANGE GOALS FOR TECHNOLOGY

Officials here say that because of the accident they will more closely match what multinationals have to offer with the needs of the country. And particularly for toxic industries, they say, there will be much more examination of each plan from both the supply and the operational veiwpoints.

"Concern about hazards will be a major part of the scrutiny of new proposals from now on, particularly when chemical processors are involved," said L.K. Jha, a Government economist and former industrial adviser to the Prime Minister.

"We have the technical capability to handle any kind of technology," he said, "but we must insure that the more hazardous kinds are handled only by the most competent people and not in a routine fashion."

He added that training levels for complex industrial plants had been inadequate, particularly for low-level employees. Government inspections, he said, will be increased.

Such vigilance, many Indian officials and experts say, is long overdue. India has adequate environmental protection laws on the books, they say, but the laws have often not been enforced.

Since the accident, many experts here have begun to question whether the Bhopal pesticide plant and other enterprises like it really perform the service that was specified under agreements with the Government allowing them to operate here: to transfer technological know-how to India.

"An unfortunate assumption has been made—that when technology arrives here, it is transferred," said S.K. Goyal, head of the Corporate Studies Group, a Government-sponsored New Delhi University unit that studies corporate responsibility.

"We are finding that the technology often just gets transferred to the premises of the subsidiary, not into the society as a whole," he said. "it stays within the walls of the factory."

Moreover, Indian experts are now saying, most of India is still rural and thus requires a different kind of technology than that which multinational corporations have provided in the past. What is needed, they say, is smaller-scale technology that is appropriate to small rural businesses and does not disrupt the social and cultural norms.

This idea, called "appropriate technology," is a subject of dispute among specialists who are trying to help developing countries progress. On the one side are those who argue that the smaller, less-efficient technologies are less disruptive to local values; the other group says that such a path is too slow and will not appreciably raise the standard of living of the people as much as is possible with industrialization and high technology.

Some Indian technology officials contend that there is too much emphasis on high-powered goods and services while much of the country needs simple conveniences of life, such as a pulley to draw water from wells and a simple stove made from metal drums. Millions of people with such needs, they say, live in places like Bhopal, where new technology has not yet been integrated into the existing culture.

Some also question whether the issues raised by the disaster will bring effective action.

"This was a tragic accident," said K.L. Sahu, who collects official statistics on births, deaths, diseases and other aspects of life in Bhopal and the surrounding districts from a small government office in the city.

"But industrial countries like yours," he said, "may be more upset than people here. Two thousand people died in one place, but many more people die in smaller accidents.

"It will take a year or so," he added, "for this tragedy to be washed from the minds of the people. After that, many of the things we talk about now may be forgotten."

Mr. BYRD. Mr. President, I want to express my support for the amendment offered by the distinguished Senator from New Jersey and I am pleased to join him in cosponsoring this amendment. This amendment addresses the fundamental issue of improving community planning and emergency response efforts in the event of a toxic release into the environment.

The need to improve community planning and emergency response procedures has been underscored by the Bhopal disaster and the recent chemical releases in this country, such as the August 11, 1985 aldicarb oxime release in Institute, WV. While the responsibility for emergency preparedness and response planning and implementation rests primarily with the States and local governments, this amendment provides for improved integration of planning and emergency response efforts between a facility and a community and for appropriate Federal technical assistance through the national response team. Through such improvement we can insure increased public health and safety.

In addition, this amendment requires immediate notification to the National Response Center of toxic releases and follow up notification of actions taken to respond to and contain a release to all appropriate authorities. The delays in emergency response procedures constitute a major public health threat. Such a requirement as contained in this amendment is essential to the protection of the general public.

There are over 11,000 chemical plants in this country. Many of these plants are in or near major population centers. While the prevention of toxic chemical releases must remain a primary concern, without a well-prepared emergency response system, the health and lives of large segments of the public may be endangered. This amendment will improve the development of community emergency plans and the ability to implement such emergency response procedures in the event of a toxic release.

I wish to commend my distinguished colleague from New Jersey for his fine efforts on this issue. I am pleased to support this amendment.

Mr. STAFFORD. Mr. President, I congratulate the most able and distinguished Senator from New Jersey for his amendment, which I am pleased to support, and I ask unanimous consent that I be added as a cosponsor for the amendment, as well as Senators BYRD and ROCKEFELLER.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, this amendment would require facilities that handle certain extremely hazardous chemicals to notify local emergency response officials that they do so, and to inform these officials [illegible] the health hazards posed by the chemical and of appropriate response actions in the event of an accident. It also requires these facilities to let local officials know when they do have an accident.

The amendment places corresponding duties on local officials to develop emergency response plans.

Mr. President, these requirements are not unduly burdensome, and they will help protect the public from serious chemical accidents.

I urge my colleagues to support this amendment and, Mr. President, for the majority I am prepared to accept it.

Mr. LAUTENBERG. I thank the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 638) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I believe we are now prepared if the Senator from Montana wishes to offer an amendment that we understand he has.

AMENDMENT NO. 639

Mr. BAUCUS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for himself, Mr. STAFFORD, Mr. BENTSEN, and Mr. GLENN, proposes an amendment numbered 639.

Mr. BAUCUS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Tha amendment reads as follows:

Page 87, line 16, delete the closed quotations.

Page 87, after 16, insert the following:

"(d)(1) This subsection applies to facilities—

"(A) which as of July 1, 1985, were not included on, or proposed for inclusion on, the National Priorities List; and

"(B) at which special study wastes described in sections 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act or any leachate from abandoned mine sites are present, including any such facility from which there has been a release of a special study waste or leachate, except that this subsection shall not apply to a facility which does not involve the presence of any such waste or leachate in any significant quantity.

"(2) Pending revision of the hazard ranking system under subsection (c), no facility to which this subsection applies may be added to the National Priorities List unless the Administrator makes the following specific findings, based on facility-specific data:

"(A) as to the status of studies by the Environmental Protection Agency on such waste under the Solid Waste Disposal Act and of regulation of such waste under subtitle C thereof;

"(B) as to the extent to which the hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility;

"(C) as to the quantity, toxicity, and concentration of hazardous substances that are constitutents of any speical study waste at, or release from, such facility, the extent of or potential for release of such hazardous constituents, and degree of risk to human health or the environment posed by the release of such hazardous constituents at such facility: *Provided*, That the findings in this subparagraph shall be based on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility; and,

"(D) that based on the findings in subparagraph (C), the degree of risk to human health or the environment posed by such facility is equal to or greater than the risk posed by facilities at which no special study waste is present and which are proposed for inclusion on the National Priorities List.

A person may be subject to liability under sections 106 or 107 under this Act for any waste or release referred to in paragraph (1) of this subsection at any facility to which this subsection applies only if the specific findings required under this paragraph with respect to that facility have been made and such suit against such person supports each specific finding with appropriate facility-specific data. This paragraph shall not apply to any facility that is included on the National Priorities List pursuant to a hazard ranking system revised in accordance with subsection (c) so as to incorporate the factors identified in subparagraphs (C) and (D) of this paragraph.

"(3) Following the Administrator's completion of the applicable special waste study required under section 8002(f), (m), (n), (o), or (p) of the Solid Waste Disposal Act, and the determination required under section 3001(b)(3)(C) or, in the case of a special study waste described in section 3001(b)(2)(B), the authorization of regulations by Congress pursuant to section 3001(b)(2)(B)), of such Act, if a special study waste is not hazardous waste listed under section 3001 of the Solid Waste Disposal Act, the waste stream, or one of the constituents thereof, may not be deemed to be a hazardous substance unless such waste, at the facility in question, has one of the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act.

"(4) Nothing in this subsection shall be construed to limit the authority of the Administrator to remove any facility which as of July 1, 1985, is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

"(5) Nothing in this subsection shall be construed to limit the authority of the Administrator or the Attorney General from seeking abatement of an imminent and substantial endangerment under section 106(a).".

Mr. BAUCUS. Mr. President, I rise today to offer an amendment with my distinguished colleagues from Vermont [Mr. STAFFORD], Texas [Mr. BENTSEN], and Utah [Mr. GARN] in cosponsoring this amendment to S. 51, the Superfund Improvement Act of 1985. This amendment adds a new subsection (d) to section 105 of CERCLA, and builds upon a provision already contained in section 120 of S. 51.

As one of the cosponsors of the amendment which was adopted by the Environment and Public Works Committee and is now contained in section 120 of the bill, I want to clarify its background and intent. I also want to acknowledge the support of my cosponsor, Senator DOMENICI, with whom I offered the amendment in the committee. In addition, I want to explain in some detail the intent and purpose behind the related "Special Waste Findings" amendment that is being offered by Senators STAFFORD and BENTSEN and on behalf of myself and other members of the Environment and Public Works Committee.

SECTION 120—NATIONAL CONTINGENCY PLAN (HAZARD RANKING SYSTEM)

The purpose of section 120 of the bill is to assure that the Environmental Protection Agency undertakes a systematic, unbiased, and open reassessment of the hazard ranking system [HRS] which it currently uses to determine the sites that should be included on the national priorities list. I am concerned that the current hazard ranking system may not accurately assess the relative degree of risk to human health and the environment posed by sites and facilities subject to review. I do not prejudge that question, but I do think EPA needs to take a very hard look at the HRS in a formal review process, and the committee has agreed.

My concern arose initially after learning of a report by TRC consultants that had challenged the technical validity of the EPA hazard ranking system—the so-called MITRE model. While I cannot say whether the TRC consultants' specific critique is or is not technically valid, I do think it raises a significant number of potentially important questions about the adequacy of the present hazard ranking system need to be examined carefully in an open process that takes into account public comment.

My concern has deepened upon learning that EPA has asked MITRE—and apparently only MITRE—to review and critique the TRC report which had criticized the MITRE model. This hardly seems like the kind of independent, open-minded review and assessment for which I had hoped.

Thus, I think more than ever section 120 needs to be enacted. There are several related points about this provision that I want to underscore.

First, this provision creates a nondiscretionary duty for the Administrator to act within 12 months. Likewise, the amendments of the hazard ranking system required by this provision must be effective within 18 months. Both of these requirements are mandatory, not merely directive; if ignored by EPA, the requirements may be enforced by citizen suit.

Second, the provision requires that amendments to the hazard ranking system be adopted in accordance with a specified informal rulemaking procedure. The purpose of this requirement is to assure that EPA will solicit, seriously consider, and respond thoughtfully to public comment on the inadequacies of hazard ranking system and how the model can be improved to accurately assess the relative risks posed by hazardous waste sites and facilities.

Third, the provision requires the revised hazard ranking system to go into effect no later than 18 months after this bill is enacted. This means that after the effective date of the revised hazard ranking system, newly listed sites can be added to the NPL only in accordance with the revised system. In other words, once it is in effect EPA may not disregard the new HRS or give it only limited weight in NPL listing decisions. The Agency must list higher ranked sites in preference to lower ranked sites under the amended system.

Fourth, the existing hazard ranking system would continue in effect until the revised system is in place. Thus, the provision should not disrupt progress to clean up existing NPL sites or preclude EPA from listing new sites in the interim until the HRS is revised as required by section 120 of the bill.

"SPECIAL WASTE FINDINGS" AMENDMENT

Since the committee reported out its "Superfund Improvement Act of 1985," several concerns have been raised that have convinced me and my colleagues on the committee that additional amendments are needed.

First, some of those who reviewed section 120 of the bill expressed dismay that the final sentence of new section 105(c) of the act might be construed to require EPA to continue to use the present HRS without any revision for 18 months. This was not the intent at all. The intent was only to allow EPA to continue to use that system—or to modify it if the Agency chooses—until the required revision goes into effect in 18 months.

Second, it was also maintained by some that section 120 provides no standard for EPA to use in deciding how to revise the HRS. I do not entirely agree with this concern, since section 120 specifically states that amendments to the HRS—

> shall assure, to the maximum extent feasible, that the [HRS] accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review.

I believe this is the standard that must guide EPA in revising the HRS under section 120 of the bill, as reported from the committee. However, in order to further clarify the intent of this provision, the "Special Waste Findings" amendment makes clear that:

Quantity, toxicity, and concentration of hazardous constituents, not merely total volume of waste must be considered to accurately assess risk; and release, exposure, and risk data are to be evaluated on a site-specific basis without reliance on inappropriate assumptions or general theories.

Thus, the final sentence of paragraph (2) of new subsection 105(d) indicates that the HRS should be revised, as provided in subsection 105(c), to incorporate these factors.

The third concern that was raised about section 120 of the committee bill related specifically to the so-called "special wastes" that are described in sections 3001 of the Solid Waste Disposal Act. It was argued that until the HRS is revised to assure that the foregoing factors are weighed accurately, some high volume, low toxicity waste sites posing low risk might be listed on the NPL in preference to other, potentially more serious sites. This concern was underscored by the subsequent decisions by the U.S. Court of Appeals for the District of Columbia in the companion Eagle-Picher cases (No. 83-2259, et. seq.).

The Eagle-Picher decisions presented the Congress with a difficult problem. On the one hand, we did not want to prevent EPA from listing and achieving expedited cleanup of sites posing a genuine and substantial threat to human health or environment, regardless of whether they involve special study wastes. That is the very function of Superfund, and in my State of Montana, there appear to be a number of waste sites—including special study wastes that pose just such a concern. The Silver Bow Creek site is just such an example where I have actually pushed to have the site expanded downstream. I have supported and continue to support these cleanup efforts.

On the other hand, Congress has recognized that these special study wastes warrant separate attention and evaluation, and as of this date, EPA has not completed its long overdue mandated studies on these wastes. Given scarce funds, we need to concentrate on the sites of greatest concern, and the committee was not convinced that the present MITRE model would produce that result. For these reasons, we felt we could not simply ratify the Eagle-Picher decisions for the future.

Thus, in the "Special Waste Findings" amendment that is offered on behalf of the committee, a balance has been struck. Until the HRS is properly revised, special study waste sites—including abandoned mine site leachate may be listed on the NPL only if the Administrator of EPA makes the required specific findings based on facility-specific data. Liability for costs, damages, or penalities may be imposed for the sites which are so listed, but only if the requisite specific findings have been made and only if the Administrator in court supports each of these specific findings with appropriate facility-specific data. The Administrator's authority to seek emergency abatement orders under section 106(a) has been preserved, as well as his authority under section 104 to spend fund moneys to clean up pollutants and contaminants.

By establishing this balance, the amendment will assure that: no delay occurs in cleaning up sites presently listed on the NPL; the MITRE model will be revised to accurately reflect comparative risk on a site-specific basis; in the interim, special study waste sites—or abandoned mine drainage areas—could be listed on the NPL if they present a genuine and substantial risk, but certain safeguards would be put into place to assure that proper site-by-site assessment of risk is undertaken before this is done and that higher priority sites are listed first; and EPA's emergency authorities under section 104 and 106(a) of CERCLA would remain available to deal with these sites, when appropriate. However, liability for costs, damages, and penalties for special study wastes and releases at such sites and areas not listed as of July 1, 1985, would be imposed under sections of 106 and 107 of the act only after EPA makes the necessary specific findings and offers the necessary site-specific data to support these findings in court.

Finally, the amendment makes clear that once EPA completes its special studies on these wastes—and determines whether or not to list them as hazardous wastes under section 3001 of the Solid Waste Disposal Act, the waste streams which are not found to be hazardous—and the constituents of these waste streams—will not be treated as hazardous substances under CERCLA. The only exception is for those wastes which flunk the characteristic tests listed or identified under section 3001 of the Solid Waste Disposal Act.

Mr. President, this amendment is very simple. Essentially, under present law, the hazard ranking system that the EPA utilizes under superfund is set up so that if a certain hazardous waste material is found in any degree, essentially, at a site, the system assumes that that same waste material is found proportionately throughout the entire site. This causes some practical problems at some mine sites because, even though a hazardous waste is found at a certain location, it is confined to that location; that is, it is not spread throughout the entire site.

So this amendment would direct the EPA, utilizing this hazard ranking system, to first engage in an examination to determine the extent to which the hazardous waste is throughout the entire site so that we have a more accurate representation and a more accurate picture of the degree to which the material is actually in the site.

It is my understanding that this amendment has been cleared. In fact, I am very proud to have as cosponsors of my amendment the distinguished chairman of the committee, Mr. Stafford, as well as the ranking member of the committee, Mr. Bentsen.

Mr. BENTSEN. Mr. President, the current hazard ranking system does not always work to give the highest ranking score to the most dangerous site. For this reason the bill requires EPA to revise the model and use the more accurate formulation in the future.

The sponsors of this provision are also aware, however, that there are a number of sites which may be "caught in the middle" between the old and new rules—sites which have been proposed for listing but which have not yet been listed as of the date of passage of this bill will still be judged under the existing criteria. Indeed, under the reported bill, the new rules, whenever they may be finalized, will not apply to sites already on the proposed list.

This is not to say, however, that the Administrator should not exercise prudent discretion in determining when to order the commencement of an RIFS for a mining site proposed for listing but not yet listed, or what the content of an order would be. The Administrator may choose, for instance, in the example of a mine tailings pond for which he believes the hazard ranking system score is much higher than the actual degree of risk to the public health, to await the outcome of the HRS revision before proceeding with an RIFS.

Mr. STAFFORD. Mr. President, the chairman of the committee seldom opposes an amendment which he cosponsors. We have examined this amendment in the course of its production and had a part in it. We believe it is a meritorious amendment. For the majority, we are prepared to accept it.

Mr. LAUTENBERG. Mr. President, on the minority side, I agree with the chairman.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 639) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 640

Mr. LAUTENBERG. Mr. President, I am pleased to offer an amendment for my colleagues, Senator Mitchell and Senator Bradley, which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. Lautenberg], on behalf of Mr. Mitchell, Mr. Lautenberg, Mr. Bradley, Mr. Baucus, Mr. Leahy, Mr. Moynihan, Mr. Specter, and Mr. Heinz, proposes an amendment numbered 640.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 161, after line 14, add the following new title:

TITLE IV—INDOOR AIR QUALITY RESEARCH

Sec. 401. Short Title.—This title may be cided as the "Indoor Air Quality Research Act of 1985".

Sec. 402. Findings.—The Congress finds that—

(1) indoor air exposures account for a significant portion of total human exposures to hazardous pollutants and contaminants in the environment;

(2) various scientific studies have suggested that indoor air pollution, including exposure to naturally occurring chemical elements such as radon, poses a significant public health and environmental risk;

(3) high levels of radon have been measured within structures throughout the country and within the Reading Prong;

(4) existing Federal indoor air quality research programs are fragmented and underfunded;

(5) the Environmental Protection Agency's programs on indoor air quality and radon have been hindered by a lack of clear statutory authority for conducting research on indoor air quality; and

(6) an adequate information base concerning potential indoor air quality problems, including exposure to radon, does not currently exist and should be developed by the Federal Government.

SEC. 403. INDOOR AIR QUALITY RESEARCH PROGRAM.—

(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to indoor air quality, including radon. Such program shall be designed to—

(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

(2) coordinating Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

(3) access appropriate Federal government actions to mitigate the environmental and health risks associated with indoor air quality problems.

(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to——

(A) the measurement of various pollutant concentrations and their strenghts and sources,

(B) high-risk building types, and

(C) instruments for indoor air quality data collection;

(2) research relating to the effects of indoor air pollution and radon on human health;

(3) research and development relating to control technologies of other mitigation measures to prevent or abate indoor air pollution (including the development, evaulation, and testing of individual and generic control devices and systems);

(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

(A) methods for assessing the potential for randon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and the radon content of soil; and

"(B) design measures to avoid indoor air pollution; and

(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for indoor air quality.

(d) IMPLEMENTATION PLAN.—Not later than ninety days after the date of the enactment of this Act, the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

(e) INTERIM REPORT.—No later than one year after the date of this Act, the Administrator shall prepare an interim report providing—

(A) a preliminary identification of the locations and amounts of radon in structures across the United States, and

(B) guidance and information materials based on the findings of research of methods for mitigating radon.

(f) REPORT.—

(1) Not later than two years after the date of enactment of this Act, the Administrator shall, in consultation with advisory committees and groups identified in subsection (c), submit to the Congress a report assessing—

(A) the state of knowledge concerning the risks to human health associated with indoor air pollution, including naturally occurring chemical elements such as radon;

(B) the locations and amounts of indoor air pollutants, including radon, in residential, commercial, and other structures throughout the country;

(C) the existing standards for indoor air pollutants, including radon, suggested by Federal or State governments or scientific organizations and the risk to human health associated with such standards;

(D) the research needs and relative priority of these needs;

(E) the potential effectiveness of possible government actions necessary to mitigate the environmental and health risks associated with indoor air quality problems, including radon, in existing and in future structures,

and making such recommendations as may be appropriate.

(2) In developing such report, the Administrator shall consult with the National Academy of Sciences on the scientific issues regarding the quality of indoor air and the risks to human health associated with indoor air pollution.

(g) CONSTRUCTION OF SECTION.—Nothing in this section shall be construed to authorize the Administrator to carry out any regula-

tory program or any activity other than research, development, and the related reporting, information dissemination, and coordination activities specified in this section. Nothing in this section shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

(h) AUTHORIZATIONS.—There are authorized to be appropriated to carry out the activities under this section not to exceed $3,000,000 for each of the fiscal years 1986 and 1987.

Mr. LAUTENBERG. Mr. President, I am pleased to offer this amendment with my colleagues, Senator MITCHELL and Senator BRADLEY, to provide for an indoor air quality research program within the EPA. Our amendment combines elements of two bills, S. 1198, the Indoor Air Quality Research Act, which I sponsored with Senators MITCHELL and STAFFORD, and S. 1593, the Radon Assessment and Reduction Act, which I introduced with Senator BRADLEY in July.

Our amendment addresses an issue of growing concern in New Jersey and the Nation, indoor air pollution and radon exposure. We have made great strides in monitoring and protecting the air we breathe outdoors through the Clean Air Act. While this work is far from complete, and we need to strengthen and more fully implement the Clean Air Act to regulate emissions into the atmosphere, we have barely begun to address indoor air pollution.

Almost no work has been done to assess the quality of the air we breathe indoors, in our homes and at work. The limited amount of study conducted on specific contaminants indicates that indoor air pollution may present health hazards previously unimagined. There is a tremendous amount that we need to learn about the sources, health effects, and means of mitigating indoor air pollutants.

An indoor air pollutant of immediate and serious concern is radon. Naturally occurring radon gas is released into the atmosphere from rocks and soils, and dissipates without resulting in health hazards. However, when radon enters buildings through basements and spaces in foundations, with restricted ventilation, it concentrates, reaching levels which can have dire health consequences for those exposed.

The colorless, odorless, radioactive decay products, known as radon daughters, can be inhaled directly, or adhere to other particles we inhale, such as dust and smoke. Once in the lungs, radioactive particles are emitted and damage lung tissues. The health effects of exposure to radon are well documented. We know that long-term, high-level radon exposure causes lung cancer.

The Environmental Protection Agency has estimated that 5,000 to 20,000 lung cancer deaths per year in the United States may be attributable to radon exposure. There are approximately 100,000 annual lung cancer deaths. This means that up to a fifth of the Nation's lung cancer deaths annually may be precipitated by radon exposure. Because of the long latency period of radon-induced lung cancer, and because emphasis on increased insulation of homes heightened only in the 1970's, an increase in the incidence of lung cancer due to radon exposure can be expected in the next 5 to 10 years. Yet no comprehensive effort is underway to assess the extent of the radon problem, and how to deal with it.

Mr. President, accidentally, we have recently discovered that an extensive radon belt exists in the mid-Atlantic region, crossing through eastern Pennsylvania and parts of New Jersey and New York. It is frightening how this radon belt came to light. A worker at a nuclear powerplant in eastern Pennsylvania set off a radiation monitor when he was entering the plant. Investigators, seeking to determine the source of his exposure, detected radon levels in his home that were far higher than any ever found in the United States Because of high radon levels in his home, this man and his family were receiving radiation equivalent to having 455,000 chest x rays in a single year.

While this may be a unique situation, the number of homes that may be contaminated with radon is too large to continue to ignore. New Jersey environmental officials have estimated that 250,000 homes and businesses may be affected in New Jersey alone.

Indoor air pollution is not a local or regional concern. Radon contamination is a serious problem throughout our country, from Maine to Colorado. The Congress should act to address this health hazard and other health hazards posed by indoor air pollutants.

Despite concern at EPA, it has yet to establish an adequate program of research on indoor air pollution, citing a lack of statutory authority to conduct such studies. Our amendment would provide that authority, and direct the Agency to implement work in this important area.

The amendment mandates that the EPA Administrator establish a comprehensive research program to assess and collect data on health risks associated with indoor air pollutants, methods for measuring indoor air pollutants, and control technologies and mitigation measures. The EPA is also charged with demonstrating mitigation measures, a task it has already undertaken in 18 homes in Pennsylvania. Together with the Secretary of Housing and Urban Development, EPA would research new construction methods for preventing indoor air and radon contamination.

In addition, the Administration of EPA is to serve as the coordinating member of interagency efforts in this area, and establish a blue ribbon advisory committee, composed of members of the scientific community, the States, and other parties.

The Administrator, after consultation with the advisory committee, is required to report within 2 years to Congress a summary of the state of knowledge of the indoor air pollution and radon problem, the need for further study, and possible mitigation measures. Also included in this report would be an assessment of the extent of the hazard on a national basis.

The Administrator is also charged with issuing an interim report within 1 year to provide a preliminary identification of locations and amounts of radon in structures across the United States. The Agency must also issue guidance and information materials based on methods for mitigating radon.

Mr. President, our amendment provides $3 million in fiscal years 1986 and 1987 for EPA to conduct this research. This complements recent action by the Senate Committee on Appropriations, which recently adopted an amendment I offered to the fiscal year 1986 HUD-independent agencies bill providing $2 million to EPA for this purpose.

The very serious nature of the hazards of indoor air pollution demand that we embark on a comprehensive, national program to research the hazards of indoor air pollution.

In the meantime, citizens should take all available steps to check for radon in their homes, and reduce their exposure to it if unhealthy concentrations are detected. Mitigation measures include sealing of cracks and spaces if foundations, installation of ventilation devices, and installation of an impermeable layer between the foundation and the soil. Currently, no Federal assistance is available to help mitigate radon hazard. However, in response to my inquiries, the Federal Emergency Management Agency has indicated that States can apply for disaster relief assistance through the Disaster Relief Act if the eligibility criteria of the act are met. FEMA assistance can include grants and loans for temporary housing and installation of venting and sealing measures.

Mr. President, I ask unanimous consent that a letter from the general counsel of FEMA to me addressing these issues be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LAUTENBERG. Mr. President, this letter confirms that radon can be addressed by the Agency through the Disaster Relief Act. It is my hope that States and localities will, with the aid of the interim report issued by EPA, be aggressive in identifying and mitigating radon exposure in radon hotspots, and applying for disaster assistance if they are unable to meet the needs of their citizens.

Mr. President, I urge my colleagues to support this amendment.

The letter follows:

EXHIBIT 1

FEDERAL EMERGENCY
MANAGEMENT AGENCY,
Wasnington, DC, September 12, 1985.

Hon. FRANK R. LAUTENBERG,
U.S. Senate,
Washington, DC.

DEAR SENATOR LAUTENBERG: Your staff has requested our legal interpretation as to whether the Disaster Relief Act of 1974, as amended, included authority which would be applicable in responding to the release of radon gases.

The Disaster Relief Act could be used by the President to respond to a disaster caused by radon. It could constitute a disaster or emergency under our legal interpretation of "other catastrophe" in Section 102 of the Act.

The Governor of the affected state would have to determine that the disaster or emergency was beyond local and State capabilities and that Federal assistance under the authority of the Disaster Relief Act (Public Law 93-288) was needed. For an "emergency" declaration, the President would have to determine that Federal emergency assistance was necessary ". . . to *supplement* State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster." For a "major disaster" declaration there would have to be ". . . *damage* of sufficient severity and magnitude to warrant major disaster assistance under the Act." (emphasis added) A Governor requesting major disaster assistance under PL 93-288 would have to take appropriate action under State law and direct execution of the State emergency plan. The Governor also would have to make a commitment of State and local obligations and expenditures for alleviating the damage, loss, hardship or suffering resulting from the disaster.

At this point we do not have a sufficient body of knowledge as to the nature of the health threat, the extent of the problem and a recommended solution, to determine if response under the Disaster Relief Act would be an appropriate Federal action.

Sincerely,

GEORGE JETT,
General Counsel.

Mr. MITCHELL. Mr. President, Senators LAUTENBERG, BRADLEY, BAUCUS, LEAHY, MOYNIHAN, SPECTER, HEINZ, and I are pleased to offer an amendment to establish in the Environmental Protection Agency a program of research on hazardous contaminants in the indoor air and exposure to radon gas.

I have discussed this amendment with the distinguished Senator from Vermont [Senator STAFFORD]. Senator STAFFORD, Senator LAUTENBERG, and I introduced this important legislation as S. 1198 in May of this year.

Since enactment of the Clean Air Act 15 years ago, we have made great progress in the protection of air quality and the control of air pollution. The Clean Air Act has focused on the quality of air outdoors. The majority of Americans, however, spend most of the day indoors. We have done little to assess the kinds of pollutants that may exist indoors or to determine the health effects of exposure to such pollutants.

The limited information we have today results from research into specific pollutants such as formaldehyde, asbestos, and radon gas. EPA has identified a range of health effects from these and other pollutants, including lung cancer, respiratory illness, and skin and eye irritation. A recent report by the EPA Science Advisory Board concluded that exposure to toxic air pollutants may be as great indoors as it is outdoors.

Among the most serious indoor air pollutants is radon gas. Radon is a naturally occurring element found in soils and granite rock. The EPA estimates that exposure to radon may result in between 5,000 to 20,000 lung cancer dealths per year throughout the country. Radon gas is a serious problem in Maine, as well as other parts of the country.

Despite clear evidence of the serious health effects of indoor air pollution, the EPA has done little to develop a comprehensive and coordinated program of research to address the problem. In testimony to the Environment and Public Works Committee this spring, the Agency proposed to discontinue in fiscal year 1986 work on indoor air quality and radon which is currently underway. EPA termed this work a "low budget priority."

EPA announced last week tentative plans to conduct a national survey of radon. I am pleased that EPA has, at last, acknowledged the seriousness of the radon problem. This proposed survey, however, falls far short of the balanced and complete program of research on indoor air and radon which is needed. Further, we have no assurance that EPA will not slide back to its old position that radon and indoor air pollution is a low priority.

The amendment before us today has three major objectives. First, the EPA Administrator is to establish a research program to analyze data, coordinate the related activities of other agencies, and assess possible approaches to control indoor air pollution and radon problems.

Second, EPA is to submit to Congress within 2 years a report summarizing knowledge about this problem, needed further research, and potential actions to mitigate health effects. An interim report, focusing specifically on radon, is required within 1 year.

Finally, funding of $3 million is authorized to be appropriated for the EPA for the 1986 and 1987 fiscal years.

I want to stress that this legislation does not authorize the EPA Administrator to carry out any regulatory program or any activity other than research and development.

A comprehensive approach to assessing the nature of the problem, such as my amendment proposes, is a modest but important first step in dealing with the problem before it reaches unmanageable proportions.

Mr. President, I am very pleased to report that this legislation has received substantial support since its introduction earlier this year.

Last month, the Committee on Environment and Public Works held a field hearing on this important issue in my home State of Maine. Witnesses testifying at this hearing encouraged prompt action to adopt this legislation.

In addition, 14 of my colleagues have cosponsored S. 1193. And, several national organizations, including the National Lung Association, have endorsed this legislation.

Finally, the Senate Appropriations Committee has provided $2 million for research on indoor air quality in the fiscal year 1986 budget for the Environmental Protection Agency. The amendment before us will provide the EPA with clear legislative authority and direction for use of these funds.

Mr. President, I hope my colleagues will join me in supporting this important legislation.

Mr. BAUCUS. Mr. President, this amendment would authorize EPA to conduct research into ongoing problems dealing with indoor air quality, and in particular, radon pollution.

We have not been doing enough in this area to develop control technologies or other mitigation measures to prevent or abate radon pollution.

This amendment will clearly set forth EPA's responsibilities in this area.

In 1979, hazardous radiation was discovered in Butte, MT. At that time, I asked the General Accounting Office to prepare a report concerning the Butte situation.

The GAO report indicated that there was a lack of coordination among Federal agencies working on these problems. There was no central depository of information showing how similar problems had been approached in the past and what techniques have been successful in alleviating hazardous substance problems.

Since the Butte situation arose, EPA has conducted research into naturally occurring radon gas hazards in Butte and other areas throughout the country. But, this approach has not been coordinated. This amendment will require EPA to identify the scope of the problem. Then EPA will be charged with finding ways to reduce the risk to people with houses located in potentially hazardous areas.

This amendment is long overdue. The threat of hazardous radon gas is not unique to Butte, MT. It occurs all over the United States.

This amendment would take a critically important step toward ending this threat to public health.

I commend my colleagues, Senators MITCHELL, LAUTENBERG, and BRADLEY for their leadership on this important issue. I ask for its concurrence and adoption as part of the reauthorization of Superfund.

Mr. BRADLEY. Mr. President, it is with great pleasure that I rise in support of this amendment which will establish a clear statutory authority for EPA to conduct a research program on indoor air quality. This amendment has been developed jointly by Senator MITCHELL, Senator LAUTENBERG, and me to meet serious environmental problems by my State which may soon become apparent in many other areas.

A problem of particular concern in my home State of New Jersey has been that of radon gas contamination of indoor air. Radon is a naturally occuring, radioactive gas which is produced from the decay of radium. Radon in the outdoor environment does not usually exist at high enough concentrations to be a health hazard. However, it has been known to enter into homes by first, diffusing through the soil and then seeping through cracks, drains, or other openings in the basement, A serious situation exists if the radon then accumulates in the home thereby increasing the risk to residents of lung cancer due to long-term exposure.

EPA has performed studies which show that areas of the country with high radium levels in the soil are particularly prone to elevated indoor radon levels. The Reading Prong, which extends from Pennsylvania, through New Jersey and into New York is such an area. Unfortunately, we don't yet know now many of these regions exist throughout the country. One measure of the severity of the problem is that between 5,000 and 20,000 out of the 120,000 annual lung cancer deaths in the United States are caused by radon.

Mr. President, It is important to note that a targeted research program will be highly effective in mitigating many existing problems and avoiding future ones. As I have described the manner in which radon can enter a home it is obvious that the rate of such entry is influenced by many factors. Some of these are the radon content of the soil, the porosity and moisture content of the soil, as well as the construction of the home itself. Technologies for reducing indoor radon levels exist and include methods ranging from soil removal to increased venting of the home. Let me emphasize that it is much more expensive to correct an existing radon problem than it is to build a house or office building in such a way as to avoid possible future problems. I am extremely pleased that our amendment directs, EPA, in cooperation with the Department of Housing and Urban Development, to develop preventative measures.

EPA will develop with HUD techniques to assess whether land with radon present is likely to contaminate new construction on that site. In addition, the agencies will work together to develop building design measures to avoid indoor pollution in general. Such action will be valuable both to builders and future homeowners to ensure a safe living environment at the lowest possible cost.

Mr. President, it is absurd that we as a nation pride ourselves in reducing to the greatest extent possible potential health hazards and yet have no coherent research program to deal with this deadly, yet manageable contaminant. Each year that we delay an additional 5,000 to 20,000 Americans die needlessly. I ask my colleagues to join with us and support this most worthwhile endeavor which will result in immediate, cost-effective relief for the many Americans presently suffering the consequences of radon contamination.

Mr. STAFFORD. Mr. President, we know of the concern of the able Senator from New Jersey, Mr. LAUTENBERG, in the matter of radon gas in households. We know of the concern of our colleague, Senator MITCHELL, who has conducted a hearing for the committee in Maine on this same subject, and we know of Mr. BRADLEY's concern, the other able Senator from New Jersey. We have examined the amendment offered by Mr. LAUTENBERG for himself, Mr. MITCHELL, and Mr. BRADLEY, and we believe it to be a meritorious amendment. For the majority, we are prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 640) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I am pleased that the Senate is taking up the Superfund bill today. This year the Senate has already approved a reauthorization of the Safe Drinking Water Act and the Clean Water Act. With the passage of Superfund, the Senate will have acted on three critically important pieces of environmental legislation.

The Superfund Program—while faced with early difficulties—has become an ever improving cleanup program. Successful implementation of the Superfund Program is one of EPA's highest priorities—and Lee Thomas deserves much credit for the progress that has been made to date. Lee Thomas has led the way in stabilizing imminent threats of uncontrolled hazardous waste sites through Superfund removal actions and by using Superfund remedial authorities to effect longer term site cleanups.

EPA has initiated the cleanup process at hundreds of national priority list sites. It should be noted that the U.S. Army Corps of Engineers is involved in Superfund through managing remedial site design, the U.S. Geological Survey is involved through their provision of technical expertise on ground water and the Federal Emergency Management Administration is involved through its relocation activities. While EPA and other agencies have done a good job in getting the Superfund Program off the ground, cetain improvements and needed to enhance future cleanup actions.

There are possibly 20,000 hazardous waste sites located in the United States. Many of these sites are small but some are large enough to be significant environmental problems. The Superfund Program must be geared up in a responsible manner in order that cleanups can proceed at a faster pace with less cost to the Government and to the private sector. While the pace of cleanup actions needs to be increased—accelerating the program pace too much, too soon, could also reduce drastically the level of State participation in the Superfund Program. Congress and EPA must not push the fund beyond its limits.

One area of the Superfund effort that could be improved is the current settlement policy. I strongly feel that EPA and the private sector could be doing more to bring about settlements in a more timely and equitable manner. I do not believe that we need to have Superfund forever, but it seems reasonable to believe that Superfund will be with us through the end of this century. In that case, now is our chance to provide some leadership and direction to EPA.

Many observers have noted that it is unfair for Congress to leave entirely to EPA the task of creating a sensible policy out of the conflicting themes that exist in Superfund and out of very confused and skimpy legislative direction. Congress now has a new opportunity for formulating legislative language that would allow EPA to move in new and different directions. One of the most important things we can do in that regard is to streamline the settlement process. I trust we can accomplish this task.

I look forward to completing the floor debate on Superfund and I trust that the House and Senate can conference this bill in a timely manner so we can get right on with the problem at hand—cleaning up waste sites in the United States. That is our only and real goal.

Mr. STAFFORD. Mr. President, while I still have the floor, noting that at 2:30, in 3 minutes, the Senate, I believe, is going back on the immigration bill, I would say that we have no more amendments which we can dispose of in the 3-minute period. But I hope that Senators and staff members who may be listening could anticipate, assuming the immigration bill is finally disposed of this afternoon, that whatever time exists between the end of consideration of the immigration bill and about 6 o'clock will be available to us for Superfund, and there are other amendments which would not involve lengthy debate that we would like to dispose of during the remainder of the afternoon whenever we get back on this bill.

With that, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

[From the Congressional Record, Sept. 19, 1985, pp. S11770-S11786]

SUPERFUND IMPROVEMENT ACT OF 1985

The **PRESIDING OFFICER**. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act Of 1980, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 647

(Purpose: To encourage the use of innovative technologies at radon contaminated Superfund sites)

Mr. BRADLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER**. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey (Mr. BRADLEY), for himself and Mr. LAUTENBERG, proposes an amendment numbered 647.

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

At the end of title I insert the following new section:

"SEC. . RADON PROTECTION AT CURRENT NPL SITES.—It is the sense of the Congress that the President, in selecting response action for facilities included on the National Priorities List published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 because of the presence of radon, is not required by statute or regulations to use fully demonstrated methods, particularly those involving the offsite transport and disposition of contaminated material, but may use innovative or alternative methods which protect human health and the environment in a more cost-effective manner."

Mr. BRADLEY. Mr. President, this amendment would provide congressional guidance to enable EPA to use innovative or alternative cleanup methods at radon-contaminated Superfund sites if these methods protect human health and the environment in a more cost effective manner than is now the practice at EPA. These alternative cleanup techniques have the potential to provide more effective, more rapid, and less costly relief from the dangers of radon gas.

Radon gas creates a severe health problem to humans when it collects in a building. It is not a problem if the gas is allowed to diffuse into the air. The sources of radon gas are, first, naturally occurring radon in the Earth's surface and, second, manmade radon deposited as the waste product of a manufacturing process. I am joining Senators MITCHELL and LAUTENBERG in offering an amendment dealing with the problem of naturally occurring radon and the indoor air pollution problem in general. The pending amendment deals only with manmade radon contamination.

There are several sites on the current Superfund list where the hazardous waste is manmade radon buried in the ground. Current practice at Superfund sites is to use only previously demonstrated techniques. This is not as irrational as it may seem. There is a real concern that untried and unproven cleanup techniques could lead to wasteful and even counterproductive efforts. However, the problem of radon gas is very unusual. The only cleanup procedure now being considered at Superfund sites where manmade radon is the principal contaminant is to dig up the ground beneath the building and truck the contaminated dirt somewhere else. This cleanup technique is extremely time consuming and expensive and, if unchecked, could result in a real drain on limited Superfund resources.

Other cleanup techniques have been studied and have been tested. These techniques have been shown to be effective at reducing the threat to the health of the occupants of the home. The intent of this amendment is to encourage EPA to consider and use all techniques when they protect public health and the environment in a cost-effective manner.

An additional benefit of this amendment is that the experience gained by EPA at radon-contaminated Superfund sites may be incorporated into the indoor air pollution program being established by the Mitchell-Lautenberg-Bradley amendment.

I urge my colleagues to support this amendment.

Mr. President, I have checked this amendment with both the distinguished chairman of the committee, Senator STAFFORD, and the distinguished ranking member, Senator BENTSEN. I offer the amendment on behalf of myself and my distinguished colleague, Senator LAUTENBERG, and ask unanimous consent that he be listed as offering the amendment as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, in sponsoring this amendment to address the treatment of radon contamination at Superfund sites.

This amendment expresses the sense of the Senate that the Environmental Protection Agency, in determining proper remedial action plans for treating radon-contaminated national priorities list sites, is not limited to consideration of fully demonstrated methods, particularly those involving offsite transport and disposal of contaminated material. The amendment further expresses the sense of the Senate that the EPA, in selecting response actions for these sites, may use innovative or alternative methods which protect human health and the environment in a cost-effective manner.

According to EPA regulations, in order to qualify as an innovative or alternative method which would protect human health and the environment, any such method would have to provide a degree of protection equal to or superior to existing standards.

Mr. President, the threat to public health from radon exposure has only recently begun to receive the attention it deserves. The problem of naturally occurring radon contamination has surfaced in recent months, and could, according to estimates by the Environmental Protection Agency, affect 1 million homes nationwide. The extensive threat naturally occurring radon contamination poses nationwide underscores the need to implement Federal programs to address the radon hazard.

Earlier in this debate, Senator MITCHELL, Senator BRADLEY, and I were successful in adding an amendment to S. 51 which directs the Environmental Protection Agency to undertake an aggressive national program to deal with the threat posed by naturally occurring radon.

However, Mr. President, we have situations were radon contamination is not a naturally occurring phenomenon, but is the result of human activities. In the communities of Montclair, West Orange, and Glen Ridge, NJ, over 100 homes are located immediately above radon-contaminated soil. This contamination resulted from the reckless disposal of radium wastes by a firm involved in the manufacture of luminescent watch dials many years ago. Soil contaminated with the radium was later taken from the site, and used as fill for the development of homes on more than 100 acres in New Jersey.

The threat posed by radon contamination is clear. Long term, high-level exposure to radon is known to cause lung cancer. Because of this threat, the Environmental Protection Agency has included these radon sites in New Jersey on the national priorities list, making them eligible for federally funded cleanup under Superfund.

But radon contamination is a treatable hazard. Once a problem is diagnosed, relatively inexpensive, simple measures can be taken to alleviate the health threats of radon. In many cases, alternatives to excavation and removal of soil may be available and adequate to protect human health. There are means which have been employed by the Environmental Protection Agency in treating radon contaminated homes in Pennsylvania that can alleviate the threat. These measures, such as sealing of cracks and spaces in foundations and installation of ventilation systems, are relatively low-cost items, and provide the degree of health protection needed.

In its remedial investigation/feasibility study recently completed for these sites, the EPA has investigated the feasibility of using such measures. However, because of the nature of the contamination, such alternative and innovative measures may not be adequate remedial action. In cases where the contamination could be remediated and public health protected through the implementation of alternative and innovative measures, this option should be fully investigated.

Prior to the undertaking of Federal

remedial action under Superfund, the State of New Jersey began a pilot program to alleviate the health hazard facing the residents in the affected homes. Under this program, the State of New Jersey is excavating and removing the contaminated soil from 12 homes.

The cost of this action is staggering. This pilot program will cost at least $8 million. If similar action were taken to remediate the remainder of the affected homes, the price tag, according to the EPA, could easily approach $200 million. Mr. President, this enormous cost would serve as a significant drain on the Superfund, and could slow down the cleanup of these sites.

However, Mr. President, the residents of these contaminated homes should be protected from this health hazard as soon as possible.

The use of such innovative technologies, where feasible and adequate to protect human health and the environment, would make the cleanup of these sites more cost-effective and practical, and timely while ensuring the health of those residents affected in an expedient manner.

I urge my colleagues to support this measure.

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. Mr. President, we have examined the legislation proposed in the amendment by the able Senator from New Jersey. We are prepared to accept it.

Mr. BENTSEN. Mr. President, acting for the minority, we have examined the legislation and think its contribution will be helpful. We have no objection to it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 647) was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 648

Mr. STAFFORD. Mr. President, I send an amendment to the desk on behalf of myself and the able Senator from Texas [Mr. BENTSEN] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for himself and Mr. BENTSEN, proposes an amendment numbered 648.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Delete the text from page 54, line 4, through page 58, line 20, and insert in lieu thereof a new section as follows:

"SEC. 106. (a) Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by this Act, is further amended by adding after "Notice, Penalties" in the title to section 103; ", Inventory, and Emergency Response". Section 103 is further amended by adding at the end thereof the following new subsection:

"(h)(1) The requirements of this subsection shall apply to owners and operators of facilities that have ten or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) that manufacture or process more than 200,000 pounds per year of a chemical substance listed pursuant to paragraph (2) or that use more than 2,000 pounds per year of a substance listed pursuant to paragraph (2). For purposes of this subsection,

"(A) The term 'manufacture' means to produce, prepare or compound a chemical substance.

"(B) The term 'process' means the preparation of a chemical substance, after its manufacture, for distribution in commerce—

"(i) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance,

"(ii) as part of an article containing the chemical substance.

"(C) The term 'use' means to use for purposes other than processing.

"(2)(A) Not later than July 1, 1986 the President shall publish a list of toxic chemical substances which, on the basis of available information and in the judgment of the President, are manufactured in or imported into the United States in aggregate quantities that exceed 500,000 pounds per year and, (i) based on epidemiological or other population studies, generally accepted laboratory tests, or structural analysis are known to cause or are suspected of causing in humans adverse acute health effects, cancer, birth defects, heritable genetic mutations, or other health effects such as reproductive dysfunction, neurological disorder, or behavioral abnormalities, or (ii) because of toxicity, persistence, or tendency to bioaccumulate in the environment, may cause adverse environmental effects. Unless and until such list is published, those specific chemical substances identified in section 101(14) of this Act shall constitute such list.

"(B) the President shall, as necessary, but no less other than every two years, review and revise the list required by this paragraph. Any person may petition the President to add a chemical substance to the list or to remove a chemical substance from the list.

"(C) The President may establish a quantity different from that established in paragraphs (1), (2), or (3) for particular chemical substances, based on their toxicity, extent of usage and such other factors as the President deems appropriate. The President, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this subsection to the owners and operators of any particular facility that manufactures, processes, or uses a chemical substance listed under subparagraph (A) if the President determines that such action is warranted on the basis of toxicity of the substance, proximity to other facilities that release the substance or to population centers, the history of releases of such substances at such facility, or such other factors as the President deems appropriate.

"(3) The owners or operators of a facility subject to this subsection shall complete a Toxic Chemical Release Inventory Form as published under paragraph (4) for each chemical substance listed under paragraph (2) that was manufactured, processed, or used in quantities exceeding those established under paragraph (1) or, where applicable, subparagraph (2)(C), during the preceding calendar year at such facility. Such form shall be submitted on or before June 30, 1987, June 30, 1990, and June 30, 1993, and shall contain data reflecting releases during the preceding calendar year. If the President has not published the form required by paragraph (4) on or before December 31, 1986, owners and operator required to submit information under this subsection shall do so by letter to the Administrator of the Environmental Protection Agency postmarked on or before June 30, 1987.

"(4)(A) Not later than June 1, 1986, the President shall publish a Toxic Chemical Release Inventory Form. Such form shall provide for the name and location of and principal business activities at the facility and shall provide for submission of the following information for each listed substance known to be present at the facility—

"(i) the use or uses of the chemical substance at the facility;

"(ii) the annual quantity of the chemical substance transported to the facility, produced at the facility, consumed at the facility, and transported from the facility as waste or as a commercial product or byproduct or component or constitutent of a commercial product or byproduct;

"(iii) the annual quantity of the chemical substance entering each environmental wastestream, including air, surface water, land, subsurface injection, and discharge to publicly owned treatment works; and

"(iv) for each wastestream, the waste treatment methods employed and the annual quantity of the chemical substance remaining in the waste-stream after treatment.

"(B) For purposes of this paragraph, facility owners and operators may utilize readily available data collected pursuant to other State and Federal environmental laws, or, where such data are not readily available, reasonable estimates. Nothing in this subsection shall require the monitoring or actual measurement of quantities of substances or releases beyond that required under other authorities. In order to assure consistency, the President shall require that data be expressed in common units.

"(5) The Governor of each State shall designate an official or officials of the State to receive Toxic Chemical Release Inventory Forms. The facility owner or operators shall submit the Forms to such official or officials and to the President.

"(6) Subject to the provisions of paragraph (8), the President and the Governor shall make the information submitted pursuant to this subsection available to the public. The President and the Governor may charge reasonable fees to recover the cost of reproduction and mailing of data.

"(7) The President shall establish and maintain in a computer database a National Toxic Chemical Release Inventory based on data submitted under this section. EPA shall make these data accessible by computer telecommunication to any person on a cost-reimburseable user fee basis.

"(8) (A) The President may verify the data contained in the Toxic Chemicals Release Inventory Form using the authority of section 104(e) of this Act.

"(B) Information submitted under this subsection shall be treated as information submitted under section 104(e) and (other than data on the quantity and nature of any release and the identity of the chemical substance released) shall be subject to the provisions of section 104(e).

"(9) Any person who knowingly omits material information or makes any false material statement or representation in the Toxic Chemicals Release Inventory Form shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than one year, or both.

"(10) Nothing in this subsection shall be construed to limit the ability of any State or locality to require submission of information related to hazardous substances, toxic chemical substances pollutants or contaminants or other materials.

"(11) Section 104(e) of the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980, as amended by this Act, is further amended by inserting "and section 103" after "under this section" in the first sentence."

Mr. STAFFORD. Mr. President, this amendment is a substitute for section 106 of S. 51, which provides for a hazardous substances inventory. Section 106 was included in the bill.

At the suggestion of my good friend and colleague, and most valuable member of our committee, the Senator from New Jersey, Senator LAUTENBERG, has been instrumental in developing this substitute as well.

The intent behind this amendment is to require manufacturing facilities handling substantial quantities of toxic chemicals to report the annual quantities of these chemicals they dump into the environment. These reports when compiled will constitute an inventory which tells us where the toxic chemicals are and where they are being released into the environment. Such an inventory will be a valuable tool for environmental regulators, for the health professionals, the concerned public, and the companies themselves.

The inventory will provide the basic what, where and how information that is vital for sensible management and control of toxic chemicals. This substitute amendment responds to concerns that have been raised about the inventory requirements in section 106. It will apply to fewer facilities and require less reporting by submitters.

It will include only chemicals that can harm public health or the environment when released, allows the use of already available data and reasonable estimates, no new testing or monitoring requirements are established, trade secrets are protected, and it reduces the paperwork burden on industry in terms of distributing completed forms. In short, Mr. President, this amendment is as responsive as possible to the legitimate concerns that have been expressed while not giving up to any significant degree its intended public health and environmental benefits. This inventory is a concept that the people support.

After the Bhopal disaster and the continuing litany of chemical accidents in this country, the public wants to know and the public has a right to know about the releases of toxic chemicals, deliberate releases that occur every day as well as accidental releases. This amendment, Mr. President, will provide that information.

Mr. President, I would like to take a few minutes to discuss further the need for a toxic chemicals release inventory and the intent behind this amendment. But first, I particularly want to thank my good friend and colleague, the distinguished Senator from Texas, Senator BENTSEN for his help in developing this amendment. As usual, he was the source of many good ideas for ways to achieve the goals of the amendment without creating too large a burden on the manufacturing industry.

Public concern about toxic chemicals is at an all time high. Hardly a week passes without new revelations about the dangers of chemicals substances in our daily lives. Chemical substances that are known to cause cancer, birth defects, and other serious diseases are being released daily into our environment not only by accident, but also by design. Despite 15 years of progress in pollution control, it is still common business practice to dump dangerous chemicals into the air, into the water and under the ground.

Mr. President, it is clear that, as a society, we still have a long way to go before we can say we are effectively managing our exposure to these chemicals. What do we need to do? Common sense and the most elementary principles of management tell us that one essential component is information. We need answers to three questions. First, which chemicals are we really worried about? Second, where are these toxic chemicals being manufactured, used, and released? And third, what quantities are being released?

Our present system of pollution control laws suffers from being fragmented. The information needed to answer these three vital questions, to the extent it exists, is scattered throughout different program files at several levels of government. Even if these data could be systematically collected together by the thousands of bureaucrats who control them, they still would be hard to analyze. Existing data are reported in inconsistent units—pounds per hour on the one hand versus milligrams per liter on the other. It is difficult if not impossible, to get a picture of toxic chemical releases at one industrial plant, much less develop a community or regional or national picture of toxic pollution activity.

My colleagues may well ask whether I am exaggerating. I am not. Last year, a sophisticated environmental research organization in New York City tried for months to understand waste handling practices at some 35 chemical processing plants around the country. The organization, Inform, Inc., selected several toxic chemicals widely used in industry. They searched every publicly available pollution control agency file at every level of government trying to get answers to these simple questions: On an annual basis, how much of the chemical is used at the plant? How much waste containing the chemical is generated in a year? What happens to this waste?

Despite hundreds of hours of research, Inform could not get satisfactory answers to these questions.

Except in the State of New Jersey, where the answers exist on one-page forms submitted by the companies themselves. These forms, called the New Jersey Industrial Survey, contain each facility manager's best estimate of the input, output, and loss of designated toxic chemicals. A very similar inventory exists in the State of Maryland.

Both the Maryland and New Jersey inventories have proven to be very useful to environmental managers and health officials. With these inventories, officials know how to contact persons who handle particular chemicals so that they can be notified of health warnings or other important information. the inventories reveal geographic and industrial patterns of environmental release, which health officials can correlate with records of disease incidence to seek out possible relationships. Regulatory officials from various programs, from occupational safety to air and water pollution, use these inventories to cross check other data. Aggregated data from an inventory of chemical waste production and discharge can be used by environmental managers to help set program priorities. Are there certain geographical areas with particularly heavy air emissions of a potent carcinogen? Which toxic chemicals or categories of chemicals are discharged the most, and into which media? Do some companies release more toxics than others manufacturing the same product? Which industrial categories warrant more attention?

In short, Mr. President, a toxic chemicals release inventory offers the possibility of making the management of toxic chemicals more efficient. Scarce resources can perhaps be targeted to where the problems are greatest.

Mr. President, there is another reason why companies should disclose their dumping practices. It is that the public has a right to know about the toxic chemicals that are being released day by day into the air and water. Just as there is a right to know about accidental release of a carcinogen, for example, there is a right to know about intentional release of the same chemical.

The amendment which Senator BENTSEN and I are offering today makes an important contribution to achieving the benefits I have been describing. And it does so without placing an undue burden on industries. There are thresholds in terms of size of facility and volume of production and use that are sensitive to the concerns of small companies. Further, the amendment does not require new emissions monitoring programs. It simply requires that exising data be gathered into one place, supplemented by reasonable estimates where necessary. Mr. President, it simply cannot be very expensive to go through the files, or talk to the plant foreman, and pull these numbers together. They probably already are consolidated in most facilities in order to assure compliance with regulatory programs; and if they aren't, they should be.

This amendment responds to every concern that I have heard about the provision in S. 1251 that it would replace, section 106. Yet it does so without harming the intent of that section. I commend this amendment to my colleagues and urge that they support it.

Mr. President, if I may, I will continue now with a discussion of the specific provisions of this amendment and the intent behind them.

This amendment establishes a new subsection (h) in section 103 of the Comprehensive Environmental Response Compensation and Liability Act of 1980.

Consistent with other provisions of the Comprehensive Environmental Response Compensation and Liability Act, the amendment places responsibility for implementation on the President. It is intended that the President delegate this responsibility to the Administrator of the Environmental Protection Agency as he has other Comprehensive Environmental Response Compensation and Liability Act Responsibilities.

Paragraph (1) establishes the characteristics of facilities that are subject to the requirements of this subsection. These include a small business exemption: facilities with fewer than 10 employees are not subject to the reporting requirements.

The requirements apply to facilities in Standard Industrial Codes 20 through 39. They do not apply to retail outlets, dry cleaning establishments or warehouses not associated with manufacturing facilities.

The requirements apply to facilities that handle substantial quantities of listed toxic chemicals. These include facilities that manufacture or process more than 200,000 pounds per year of a listed substance, or that use more than 2,000 pounds per year.

The term "use" is deliberately not defined precisely. Examples of chemical use, as distinct from chemical manufacture or processing, would include use as a nonreactive industrial solvent or a component of a cutting fluid. The President may, of course, further define these terms in regulations, based on the experience and knowledge of chemical uses obtained under the Toxic Substances Control Act and other statutes.

A distinction in threshold quantities is made between manufacturing and processing facilities and facilities that use a listed chemical for other purposes. This distinction is made because users of chemicals are more likely to release a larger proportion of the toxic chemicals as waste than are facilities that manufacture or process the chemical for sale as a product.

Paragraph (2) requires the President to publish a list of toxic chemicals which shall be the subject of reporting requirements. To be designated, a chemical generally must be manufactured or imported in aggregate quantities that exceed 500,000 pounds per year. This determination of aggregate quantity is to be based on information available to the President. It is recognized that the quantity of a chemical manufactured and imported may vary from year to year. The President should use the most recent data available to him in making a determination of aggregate volume pursuant to this paragraph. Implementation of these provisions should not be delayed while waiting for more recent or more precise production and import data. Nor is the President expected to undertake programs to gather production and import data solely for the purpose of identifying chemicals pursuant to this paragraph although he has the authority to obtain such information under the Toxic Substances Control Act and may choose to do so for purposes of this subsection, provided it will not delay implementation.

In order to determine that a chemical meets the aggregate volume criterion, the President need not prove that the chemical exceeded that volume in the year for which reporting is required. He need only determine that the criterion was met in the most recent year for which he has data. Of course, substances may be added to or moved from the list during periodic revisions if more recent data should so indicate.

This paragraph also describes the toxicity criteria for including a chemical substance on the list. These are broadly defined to include both acute and chronic adverse human health effects as well as adverse environmental effects. As adverse human health effect need not be life threatening, debilitating or long lasting to be considered. The President should include, for example, substances that can cause significant respiratory or eye irritation in exposed populations.

The President is to list chemical substances known to cause or suspected of causing adverse human health effects. The potential for causing human cancer for example, is indicated by tests carried out on animals or other organisms, or in some cases because of structural similarity to other substances which have been subjected to testing. Such substances should be listed. It is not intended that chemical substances should be listed only on the basis of proof of human toxicity, because such proof often is unavailable.

In construction the list of toxic chemical substances under this paragraph, the President should consult lists of toxic chemicals compiled by the International Agency for Research on Cancer, the National Toxicology Program Annual Report on Carcinogens, and other lists compiled by other entities. He also should consult various

State lists of chemicals for which similar reporting has been required, including those of New Jersey and Maryland. Generally, any substance appearing on these lists that also meets the aggregate volume requirement should be included on the list compiled under this paragraph.

Should the President fail to publish the required list of chemicals, then the reporting requirements will apply to specific chemicals that appear on the list of hazardous substances compiled under section 101(14)—the so called Superfund list.

Subparagraph (B) of paragraph (2) requires the President to review and revise the list of chemicals no less often than every 2 years. Any person may petition the President to add chemical substances to the list or delete chemical substances from the list, based upon the criteria set forth in this amendment.

It is recognized that, with regard to particular chemical substances, the threshold quantities described in paragraphs (1), (2), or (3) may be found to be inappropriate. Consequently, the President is given the authority to establish, for a particular chemical substance, a different quantity based on toxicity, extent of usage, and such other factors as the President deems appropriate.

Similarly, the President may apply the requirements of this subsection to a facility to which they otherwise would not apply, based on the toxicity of a chemical substance manufactured, processed or used at the facility, proximity to other facilities or to population centers, history of releases at the facility, and other factors the President deems appropriate. The Governor of a State may request that this subsection apply to such facilities within that State, and it is expected that the President will comply with such a request.

Paragraph (3) calls for three toxic chemicals release inventory reports, at 3-year intervals, beginning in 1987. Each inventory is to be based on activity during the preceding calendar year. This approach allows ample time for affected facilities to obtain and compile the necessary data or estimates during calendar year 1986 for reporting by June 1, 1987.

This subsection does not require actual measurement or monitoring of the quantities of listed toxic substances or releases beyond that required in other statutes. The President has ample authority in the various environmental statutes to require measurement and monitoring, should additional measurement or monitoring be warrented. Owners and operators of facilities subject to the requirements of this subsection may utilize readily available data collected pursuant to other laws. Reasonable estimates may be used where actual data are not available. Estimates may be based on engineering estimates and computation, process material balance studies, or other estimation techniques. In order to report data in common units, it may be necessary to perform conversion calculations on some existing data before they are submitted.

Paragraph (5) requires the Governor of each State to designate one or more officials to receive inventory forms, and requires facility owners or operators to submit the forms to these officials and to the President. Paragraph (8) provides that submitted data is subject to the provisions of section 104(e), which defines applicable trade secret protection and the conditions under which information obtained from any person may be held confidential. Data on the annual quantity and nature of chemical substances released and the identity of released substances may not be held confidential. This provision is consistent with other environmental statutes.

Except insofar as information is protected by these provisions, the Governor and the President are required to make all submitted data and information available to the public. Consistent with the purposes of this subsection, the public must have access to the name and location of the facility and to data on which chemical substances are being released and the annual quantity of such substances released.

The President is required by paragraph (7) to establish and maintain in a computer data base a National Toxic Chemical Release Inventory into which information submitted on the forms will be entered. The information should be entered in such a way as to allow aggregation and analysis according to location and type of facility, by chemical substance, and by such other variables as may lead to useful analyses of patterns and trends of release of toxic chemical substances. The Environmental Protection Agency already maintains a chemical information data base under the Toxic Substances Control Act with which the information and data required by this subsection generally are compatible. According to information supplied by the Agency, this data base can be modified to allow input of data from these requirements within a short time and with little expense. Consequently, it is assumed and intended that the President will make use of this existing data base rather than establishing a new data base.

Paragraph (9) establishes penalties applicable to any person who knowingly omits material information or makes any false material statement or representation in the toxic chemicals release inventory form.

Paragraph (10) provides that this subsection does not preempt State or local submission requirements. Also, paragraph (11) is a conforming amendment to clarify that the provisions of section 104(e)(2) apply to reports and information obtained by the President under this subsection, as provided in paragraph (8).

Mr. BENTSEN. Mr. President, when the Committee on Environment and Public Works reported S. 51, it recognized that section 106 was an imperfect provision that would need additional attention. As reported, section 106 included some provisions that were designed to acquire information to assess emissions and discharges of hazardous substances to the environment and some provisions that were designed to provide information to emergency response authorities. This combination tended to produce an unwieldy array of material for authorities who needed something much simpler.

The amendment the committee leadership is introducing now replaces this section with a more targeted inventory of hazardous substances emissions and discharges. Other amendments will address the question of the information and procedures to be required for an Emergency Preparedness and Response Program.

A hazardous substances inventory, on a national scale, is a new and extensive undertaking. Inventories have been used effectively by several States for regulatory purposes. A properly constructed inventory can provide valuable information about potential emissions that should be regulated, the effectiveness of regulations, and trends in emissions over time. At issue now is how to construct a national inventory which attempts to balance adequacy of information and the inherent demands on businesses that an inventory poses when its uses are not precisely defined. This amendment changes several aspects of the committee bill to address this dilemma.

First, it limits the facilities subject to the inventory to industries in the manufacturing division of the standard industrial classification. These are groups 20 through 39. Mr. President, I ask unanimous consent that a listing of these industries be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

DIVISION D—MANUFACTURING

Major Group 20: Food and kindred products;
Major Group 21: Tobacco manufactures;
Major Group 22: Textile mill products;
Major Group 23: Apparel and other finished products made from fabrics and similar materials;
Major Group 24: Lumber and wood products, except furniture;
Major Group 25: Furniture and fixtures;
Major Group 26: Paper and allied products;
Major Group 27: Printing, publishing, and allied industries;
Major Group 28: Chemicals and allied products;
Major Group 29: Petroleum refining and related industries;
Major Group 30: Rubber and miscellaneous plastics products;
Major Group 31: Leather and leather products;
Major Group 32: Stone, clay, glass, and concrete products;
Major Group 33: Primary metal industries;
Major Group 34: Fabricated metal products, except machinery and transportation equipment;
Major Group 35: Machinery, except electrical;
Major Group 36: Electrical and electronic machinery, equipment, and supplies;
Major Group 37: Transportation equipment;
Major Group 38: Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks; and
Major Group 39: Miscellaneous manufacturing industries.

Mr. BENTSEN. Facilities in the SIC groups that manufacture or process more than 200,000 pounds per year of substances subject to the inventory or that use more than 2,000 pounds per year of these substances would respond to the inventory. Thus, a chemical plant manufacturing substances or using them above these quantities would be affected, but a dry-cleaner would not.

Second, it more precisely focuses the inventory on hazardous substances. While the committee-reported section would cover any hazardous substance under Superfund if it were more than 1 percent of a mixture, this proposal looks at the substance itself. If a plant used a product that was 1 weight percent a hazardous substance, it would have to use 200,000 pounds per year before meeting the 2,000-pound-per-year reporting threshold for use.

Third, the committee-reported bill applied to all substances defined as hazardous under Superfund. This proposal requires the President to establish a list of toxic chemical substances which are manufactured or imported into the United States in an aggregate volume of more than 500,000 pounds per year and are known to cause or are suspected of causing, in humans, adverse acute health effects, cancer, birth defects, heritable genetic mutations, or other health effects such as reproductive dysfunction, neurological disorder, or behavioral abnormalities, or, because of toxicity, persistence, or tendency to bioaccumulate in the environment, may cause adverse environmental effects. Until this list is published, specific chemicals defined as hazardous under Superfund serve as the list.

The President is given the authority to establish different thresholds for particular chemicals based on his judgment of their toxicity, extent of use, or other factors. The President may lower the threshold for other manufacturing facilities in S.I.C. Codes 20-39 based on such factors as toxicity of the substance, proximity to other facilities that release the same substance or to population centers, the history of releases at a facility. For his State, a Governor can request that additional manufacturing facilities in S.I.C. Codes 20-39 be added to the inventory.

The committee-reported bill would have required the first inventory 180 days after enactment and additional inventories at least every 2 years thereafter. This proposal requires three inventories: the first by June 30, 1987, for calendar year 1986; the second by June 30, 1990, for calendar year 1989; the third by June 30, 1993, for calendar year 1992. There were several reasons for these changes. It allows ample opportunity for industry to consider how to collect or estimate its emissions during 1986 and an adequate time to prepare this data for submission by mid-1987. There are 3 years between inventories to reduce the burden of preparing them and to allow the recipients to evaluate and use the information they receive. Finally, Congress must act to continue this inventory requirement. If it proves to be a useless effort or unreasonably burdensome or poorly targeted, it will not continue beyond these three submissions. If the information is useful but needed more or less frequently, Congress will have the opportunity to make such judgments and to weigh these needs against their costs.

The information required has been reduced one, to require annual quantities of materials known to be present at a facility rather than annual and monthly quantity information and two, to require general waste treatment information rather than detailed information regarding such items as the location of disposal and the identity of transporters. These are items more properly related to regulatory activities rather than inventories.

In preparing the inventory, a facility may use readily available data collected pursuant to other State and Federal environmental laws; or, where such data are not readily available, reasonable estimates may be used. In my view, this inventory is created to try to develop a reasonable sense of where hazardous substances encounter the environment. It attempts to create a loose material balance of such substances. It will be imperfect. Consequently, the use of data required by State or Federal law should be emphasized. Estimates are equally appropriate and techniques are available for such estimates—many published by EPA and other regulatory agencies. It is not the intent of this inventory to generate massive monitoring and data collection efforts. In fact, nothing here shall require the monitoring or actual measurement of quantities of substances or releases beyond that required under other authorities. The Clean Air Act, Clean Water Act, Solid Waste Disposal Act, Toxic Substances Control Act, other provisions of Superfund, and other environmental laws contain ample authority to require monitoring and data collection for regulatory or enforcement purposes. This is an important distinction. Decisions to require monitoring or data collection need to have a defined intent. In some cases a regulatory program needs to be developed, sometimes nationally, sometimes locally or regionally. In other cases, site-specific enforcement actions may be under consideration. These situations warrant the cost and burdens of added monitoring or data collection. Such decisions should be made through the authorities provided in these other authorities. This inventory is not the proper place to vest such authority and it is prohibited here.

This is not to say that an inventory is not a useful regulatory tool. Several States have developed inventories far more extensive than this one. They have used them for regulatory development such as State implementation plans under the Clean Air Act or cross checks on solid waste disposal quantities. These are important functions, tailored to the specific needs of a State and should be preserved. This proposal preserves State and local authority.

Finally, I would like to emphasize that this proposal has modified the recipients of this inventory considerably. The committee-reported bill would have required the inventories to be submitted, at a minimum, to the following: the President; State and local emergency and medical response personnel; the State police, health and environmental departments; area police and fire departments; area emergency medical services; area hospitals; and area libraries. This proposal provides for the inventory to be sent to State officials designated by the Governor and to the President. They shall make the information available to the public at a cost to cover reproduction and mailing. The President shall establish and maintain a computer data base which shall be accessible by computer telecommunication at a cost-reimbursable user fee basis. Confidential business information protection under section 104(e) of this act applies to the inventory as well.

Mr. LAUTENBERG. Mr. President, I would like to commend the leadership of the committee for its hard work on section 106 of this bill. I offered this provision when the committee considered S. 51 in March. As the esteemed chairman of the committee has explained, the bill contains a provision which would establish a hazardous substances inventory. The amendment before us would serve as a substitute to the existing section 106 in S. 51. The differences between the existing section 106 and the amendment before us reflect changes that the committee felt should be made based on comments received subsequent to markup of S. 51.

The amendment before us would accomplish the emissions inventory goals set out in section 106. It would establish a national industrial inventory that would provide information about chemical use, storage, and regular environmental releases into the air and environment from facilities manufacturing or storing certain hazardous substances.

This inventory is to be used by State and Federal agencies to improve toxic chemical management by monitoring use and tracking releases of these substances. An effective inventory will help us better understand the flow of toxics into the environment and thereby aid in preventing future Superfund sites. It will also provide critical information to Federal and State air, water, and hazardous waste programs to track compliance and enforcement efforts within these programs. As in the State of New Jersey, such information can help inform and direct research efforts. Finally, Mr. President, the inventory will provide the Government and the public with information about daily and routine exposure to toxics in our environment—something essential to protecting the public health.

Mr. President, the inventory provided for in the committee amendment will better organize existing data about chemicals being released into the environment. EPA and the States currently collect much of this information, and a number of States and cities have instituted similar inventories. They have found that the inventories are quite helpful in conducting their environmental programs. However, many States and the EPA do not have so-called multimedia inventories. The information may be scattered in air files, water files, and on RCRA manifest forms, for example, but not pulled together in one place to provide a complete, and usable, picture of total environmental exposure. In some cases, the information may not be available at all.

If we are to slow the creation of Superfund sites, and develop a profile of public exposure to toxic emissions, we must do a better job of monitoring the release of hazardous substances to the environment.

Since the committee deliberations on Superfund in March, our staffs have had the opportunity to hear many comments and continue our work on this provision. Many hours have been spent analyzing threshold levels for substances and facilities that would be covered by this provision. Our staffs have met with concerned parties and they have discussed the experience that States have had in implementing industrial inventories with State officials.

The result is a provision that will accomplish our goal of establishing a national inventory, while at the same time meeting a number of the concerns raised by small business and other industries.

Mr. President, section 106 of S. 51 is widely supported by firefighting, labor, health, environmental, religious, and consumer organizations. These organizations include the International Association of Firefighters, the National Lung Association, the AFSCME, the U.S. Conference of Mayors, the AFL-CIO, and many of our Nation's prominent environmental organizations. While the orginal provision of the bill has been limited somewhat in scope to meet concerns raised about its implementation, the provision should go far toward meeting the goals to which section 106 was addressed. I ask that a letter in support of section 106 authored by 43 of these groups be inserted in the RECORD at the conclusion of my comments.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

(See exhibit 1.)

Mr. LAUTENBERG. Again, Mr. President, I very much appreciate the committee's support for the inventory and the work of the committees leadership on this provision. I urge Senate adoption of the committee amendment.

EXHIBIT 1

FIREFIGHTING, LABOR, HEALTH, ENVIRONMENTAL, AGRICULTURAL, RELIGIOUS, CITIZEN AND CONSUMER ORGANIZATIONS STRONGLY SUPPORT SUPERFUND HAZARDOUS SUBSTANCE INVENTORY AND EMERGENCY PREPAREDNESS AND RESPONSES PROVISIONS

Dear Senator: On December 3, 1984, more than 2,000 citizens were killed and 200,000 injured in Bhopal, India, when the toxic cloud of methyl isocyanate from a Union Carbide manufacturing facility spread over the sleeping city. Following the Bhopal tragedy, the worst industrial accident in history, the American public asked, "Could it happen here?"

Today, we know it can. According to the Congressional Research Service, approximately 75 percent of all Americans live in the vacinity of facilities which handle, treat, or store hazardous chemicals. Recent chemical releases in this country, especially the release on August 11 from another Union Carbide facility in Institute, West Virginia, have underscored the lack of adequate public information about hazardous substances and the health hazards associated with exposure to them. In addition, life-threatening inadequacies in emergency response capabilities also have become apparent.

In response to these chemical disasters, the Senate Environment and Public Works Committee incorporated a provision establishing a Hazardous Substance Inventory in S. 51, the Superfund Improvement Act of 1985.

The Hazardous Substances Inventory would provide information about chemical use, storage, and releases into the air and environment from facilities handling hazardous substances. Covered facilities also would attach Material Safety Data Sheets, required by the OSHA Hazard Communication Standard, to the inventory form in order to provide information about the health hazards and safe handling of these substances.

The inventory is to be used by local, state, and federal agencies to improve toxic chemical management by monitoring location and use, as well as tracking regular environmental releases of these substances. It is to be made widely available to the public, including emergency response officials, who sorely need this information to plan for and respond to toxic chemical releases.

In addition, in late July, Senators Lautenberg, Moynihan, and Humphrey introduced S. 1531, the Community Emergency Preparedness and Response Act of 1985. They intend to offer an amendment similar to S. 1531 when the full Senate takes up the Superfund reauthorization this fall. This legislation builds upon the emergency response provisions of Superfund by providing a framework for improved community preparedness and notification around facilities that handle hazardous substances.

S. 1531 mandates that a priority list of hazardous substances be developed by the Environmental Protection Agency and that designated facilities, which store, handle or manufacture these substances, participate in emergency response planning. The Governors of each state are responsible for designating planning districts in areas where releases from such facilities might endanger public health or the environment. Local emergency planning committees subsequently would be established to prepare emergency response plans and ensure that local emergency response personnel are trained to carry out the plans successfully.

This legislation provides federal technical assistance where appropriate, but relies upon the states and localities to take primary responsibility for developing plans for protecting their citizens.

The undersigned firefighting, labor, health, environmental, agricultural, religious, citizen, and consumer organizations strongly support the Hazardous Substance Inventory in S. 51, and the emergency preparedness amendment to be offered when the full Senate takes up S. 51. The events of recent months have illustrated dramatically the need for strengthening the information requirements and emergency response capabilities under Superfund. The adoption of these provisions could literally mean the difference between life and death for the citizens of this country and for those who must respond to chemical releases.

We urge you to support these important provisions when S. 51 is brought to the Senate floor.

Sincerely,

Mike Kerr, American Federation of State, County, and Municipal Employees; Richard Duffy, International Association of Firefighters; Fran Dumelle, American Lung Association; Greg Humphrey, American Federation of Teachers; Mary Lou Licwinko, Association of Schools of Public Health; Len Simon, U.S. Conference of Mayors; Julia A. Holmes, League of Women Voters; Linda Tarr-Whelan, National Education Association; Lori Rogovin, American Association of University Women; Janet Hathaway, Public Citizen's Congress Watch; Diane VanDe Hie, National Association of Local Governments on Hazardous Waste; Robert Alpern, Washington Office, Unitarian Universalist Association of Congregations in North America; Allen Spalt, Rural Advancement Fund; Haviland C. Houston, General Board of Church and Society, United Methodist Church; Rick Hind, U.S. Pirg; Eric Jansson, National Network to Prevent Birth Defects; Linda Golodner, National Consumers League; David Mallino, Industrial Union Department, AFL-CIO; Jeff Tryens, Conference on Alternative State and Local Policies; Gene Kimmelman, Consumer Federation of America; Leslie Dach, National Audubon Society; Jay Feldman, National Coalition Against the Misuse of Pesticides; and Shirley Briggs, Rachel Carson Council.

Charles Lee, United Church of Christ Commission for Racial Justice; Bill Kinefelter, United Steelworkers of America; Victoria Leonard, National Women's Health Network; Ken Kamlet, National Wildlife Federation; Martha Broad, Natural Resources Defense Council; Anthony Guarisco, International Alliance of Atomic Veterans; Geoff Webb, Friends of the Earth; John O'Connor, National Campaign Against Toxic Hazards; Norman Solomon, Fellowship of Reconciliation; Ann F. Lewis, Americans for Democratic Action; Cathy Hurwit, Citizen Action; Blaise Lupo, Clergy and Laity Concerned; Fred Millar, Environmental Policy Institute; Scott Martin, League of Conservation Voters; Joseph R. Hacala, S.J., Jesuit Social Ministries, National Office; Kathleen Tucker, Health and Energy Institute; David Zwick, Clean Water Action Project; Dan Becker, Environmental Action; Sally Timmel, Church Women United; and Ralph Watkins, Church of the Brethren.

Mr. STAFFORD. Mr. President, this amendment is a substitute for language which was reported by the committee in S. 51. In the bill as reported and in the first draft of this floor amendment, but excluded from the language as we are presenting it here this afternoon, was an exemption from the Paperwork Reduction Act for the form that is required by this amendment. Mr. President, I would like to take a few moments of the Senate's time to outline the considerations that caused us to remove the exemption from the final language that we are offering.

Frankly, Mr. President, we included the exemption in the committee bill because we were concerned, and it is a concern well founded in recent experience, that if the Office of Management and Budget should decide to oppose the program required by this amendment, that it might block the program by prohibiting the information collection procedures on which the success of the program depends. OMB has authority to review forms and surveys and other information collection instruments prepared by the regulatory agencies under the Paperwork Reduction Act which was adopted by the Congress in 1980.

Although the committee is not now aware of any case in which the Paperwork Reduction Act has been used to prohibit the publication or use of a form required by statute, it is important that Congress exercise vigilance in this area. For instance, members of the committee—members who will be joining in this colloquy—have also recently joined in communicating our concern to the Director of the Office of Management and Budget on the use of review authorities under Executive Order No. 12291 which have unduly delayed publication of some 40 recommended maximum contaminant levels that have been proposed by the Administrator of the Environmental Protection Agency to fulfill, in part, his responsibilities under the Safe Drinking Water Act. Those RMCL's, as they are called, have been gathering dust on a desk at OMB since last April—long past the dealine set by Executive

Order 12291 for Agency review.

So, Mr. President, there is cause for concern in this area. But Senator BENTSEN and I have been willing to consider removing the Paperwork Reduction Act exemption in our amendment, and which was contained in the bill as reported, on the assurance that the Office of Management and Budget does not have the authority under that act to prohibit the publication or use of a form that is specifically required by law. Let me be clear on this point, Mr. President. This amendment requires EPA to publish and distribute a form to collect information. We are taking the Senate's time to establish the point that OMB cannot prohibit EPA from writing, publishing, circulating, and collecting data through this form. It cannot be prohibited because it is required by law.

As it happens, one of the members of our committee is also chairman of the Subcommittee on Intergovernmental Relations which has legislative jurisdiction over the Paperwork Reduction Act. On behalf of that subcommittee, the Senator from Minnesota is here to describe the provisions of the Paperwork Reduction Act which are relevant in this case. He is joined by the Senator from Florida who is also the ranking minority member of the subcommittee.

I would yield at this time, Mr. President, to the Senator from Minnesota so that the Senate might learn of his views.

Mr. DURENBERGER. Mr. President, I thank the distinguished chairman of the Committee on Environment and Public Works, the Senator from Vermont, for bringing this issue to the attention of the Senate and for his willingness to consider a different method to assure the same end. The Senator from Florida, Senator CHILES, and the Senator from Missouri, Senator DANFORTH, both raised concerns when they reviewed the committee reported bill and saw that it contained an exemption to the Paperwork Reduction Act. That exemption is removed by this amendment. But in no event should this legislative history confuse a point which is clear to all Senators. OMB cannot use its authority under the Paperwork Reduction Act to block or delay the publication or use of a form or survey or other information collection instrument that is required by law. The amendment offered by Senator STAFFORD and Senator BENTSEN here today will require the preparation and use of a form to assure the success of the program. The form which is developed under authority of this amendment is a form required by law.

Mr. President, in 1980 when the Paperwork Reduction Act was presented to the full Senate by the Governmental Affairs Committee it was accompanied by a committee report, Senate Report 96-930, which contained the following language at page 49.

> Unless the collection of information is specifically required by statutory law, the Director's determination is final for agencies which are not independent regulatory agencies.

Mr. President, that language from the committee report reflects a carefully crafted compromise. It states two conditions under which the authority of the Director on whether an information collection instrument is necessary is not final. One case is the case of independent regulatory agencies, a matter which does not concern the Senate this afternoon. The other case is the one in which the collection of information is specifically required by law. In that case it is clear that the Director does not have authority to block or prohibit use of the form.

Mr. President, I hope that those comments have been helpful, if only in reiteration of the case already well stated by the chairman of the Committee on Environment and Public Works. OMB can't stop this form.

Mr. BENTSEN. Mr. President, I want to join in remarks by Senators STAFFORD, DURENBERGER, and CHILES. The requirement for a hazardous substance inventory, which has been specifically established by the substitute amendment, can be accommodated with the requirements and protections of the Paperwork Reduction Act.

The committee was sensitive to the precedent which would be established by an exemption. The Paperwork Act is Governmentwide in its scope and covers all the Federal agencies. Given the concerns raised, and the understanding of the Paperwork Act which has been discussed today, we did not feel an exemption was warranted. The idea that Congress is not going to try to keep controls on paperwork requirements that impact the public is not a signal that should be sent.

Mr. STAFFORD. Mr. President, I

thank all Senators for their remarks and participation in this colloquy. The Paperwork Reduction Act can be a useful tool to reduce the burden of Government paperwork which has been felt by so many small businesses and other concerns in this country.

But as useful as this management tool can be, it is just as important that those of us in Congress who created the Paperwork Reduction Act and have provided authority for other management tools of a similar kind make sure that authority is not abused to the point that substantive provisions of law or national policies established by the Congress are undone. I believe that this discussion on the floor of the Senate has served both ends well.

Mr. CHILES. Mr. President, I want to thank Senators STAFFORD, BENTSEN, and DURENBERGER for their consideration of whether an exemption to the Paperwork Reduction Act is needed in mandating an inventory for hazardous substances. The substitute amendment to section 106 of S. 51 proposed by the Senators does not contain any such exemption. I agree with that judgment.

As the sponsor of the Paperwork Reduction Act in 1980, I do want to address certain concerns which have been raised over the relationship of the requirements and protections provided by the Paperwork Act to the creation of a national hazardous substances inventory.

Collecting, using, and disseminating information is a vital activity to the proper functioning of our Government. Congress has made critically important commitments to the people of this Nation in such areas as civil rights, and ensuring a safe workplace and healthy environment. Without adequate information these commitments can not be met.

The premise behind the Paperwork Reduction Act is that the Federal Government has a positive responsibility to ensure information it asks the public to provide or maintain is necessary, and will be used for the purposes intended by Congress. The public protection section of the act declares that all individuals, State and local governments, nonprofit organizations, or businesses are entitled to an assurance from their Government that the information they are either asked or required to provide has been checked for its need and efficiency. The law requires a control number be displayed by all requests for information, whether they came by way of regulations, forms, or recordkeeping requirements. Absent this control number, no one can be penalized for not following the request.

The intent behind this entitlement was to eliminate waste and hidden taxes imposed by unnecessary paperwork and regulatory requirements; and to create a meaningful structure of accountability to help restore public confidence in the idea that Government can work effectively and efficiently to use and provide information needed to meet our national commitments.

To this end, the act requires Federal agencies to justify their information demands. The public, by way of the Federal Register, is to be made aware that an agency intends to request information. Public comment is invited. The agency is to check to be sure the information is not duplicative, does have practical utility, and is being asked for in the least costly manner.

The Director of the Office of Management and Budget is responsible for reviewing agency justifications. The Director is intended to be the central manager, the manager that insists on interagency coordination if needed, the point in the system accountable for seeing to it that agencies have an incentive to meet the standards in the act. With an approval comes a control number; no control number is assigned a disapproval.

The Director must make all decisions publicly available. Both the agencies and the Director must operate within statutorily prescribed timetables.

The law is designed to enable an open and visible decision process which encourages public participation. Plenty of sunshine is key to the integrity of this process. All requests of the public, in whatever form, must be re-justified and opened for public comment every 3 years.

Unless the collection of information is specifically required by statutory law the Director's determination of an agency justification is final. Independent regulatory agencies may override the Director's review. Executive branch agencies may not.

This aspect of the Director's role raised questions concerning the form and collecting of information required by the mandate for an inventory for hazardous substances. The Director's ability to disapprove a justification of need does not extend to a collection of information requirement specifically contained in statutory law. In such instances, Congress has determined the need for information. The Paperwork Reduction Act in no way enables the Director to overturn a determinaton made by Congress and stated in law. What an agency may decide to add to a requirement specifically contained in law would be subject to approval.

In those cases Congress has specified the request and where the Director may not disapprove, the agency would still be required to assess the burden of the requirement. The Federal Register announcement and invitation for public comments would still prevail. A control number would be automatically assigned. The intent here is to enable Congress to have the best information to carry out its responsibility for oversight and periodic review of its determination of need.

From the standpoint of a single agency, or single program whose primary mission may be to save lives or protect the public, it is sometimes difficult to understand the need for a governmentwide accountability structure for paperwork and regulatory demands with its associated justification and public participation requirements. It is when you look at the overall impact of all the Federal Government's information needs upon the public that the need to establish a discipline within the exectutive agencies to control and better manage information resources becomes apparent.

Again I want to thank the sponsors of this amendment for their consideration. Senator BENTSEN, I know, has long been a warrior in the fight against unnecessary paperwork and regulations. His experience goes back to the early 1970's in trying to keep the old Federal Reports Act, the law upon which the Paperwork Reduction Act was built, from being weakened. He was a key and original sponsor of the Paperwork Reduction Act efforts in 1980.

Mr. STAFFORD. Mr. President, I know of no further speakers on this side of the aisle. I am prepared to have the Senate act.

Mr. BENTSEN. Mr. President, I know of no additional speakers on this side. We are prepared to act.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 648) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 649

Mr. STAFFORD. Mr. President, I send an amendment to the desk on behalf of myself and Senator BENTSEN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for himself and Mr. BENTSEN, proposes an amendment numbered 649.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 48, after line 3, insert the following new section and renumber subsequent sections accordingly:

METHANE RECOVERY

SEC. . (a) Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subparagraph.

"(D) in the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed (i) the term "owner or operator" shall not include the owner or operator of such equipment, unless such owner or operator is also the owner or operator of the facility at which such equipment has been installed, and (ii) the owner or operator or manufacturer of such equipment (other than the owner or operator of the facility at which such equipment has been installed) shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act, except to the extent that there is a release of a hazardous substance from such facility which was primarily caused by activities of the owner or operator of such equipment other than the recirculation of condensate or other waste material which is not a waste meeting any of the characteristics indentified under section 3001 of the Solid Waste Disposal Act."

(b) Unless the Administrator promulgates regulations under Subtitle C of the Solid Waste Disposal Act addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle; provided, however, that if the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of that subtitle, then such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.

EXPLANATION OF METHANE RECOVERY AMENDMENT

Mr. STAFFORD. Mr. President, subsection (a) of this amendment modifies the current law's definition of "owner or operator" to promote the development of methane gas recovery facilities at landfills. The amendment will remove the present risk that the owner and operator of a landfill gas operation may become involved in Superfund litigation as a result of releases or threatened releases that result from activities unrelated to the gas recovery operation.

Subsection (b) provides that unless and until EPA decides to regulate methane gas recovery processes under subtitle C of RCRA, the landfill gas operator will not be subject to challenge by a third party who alleges that the gas operator is handling hazardous wastes in violation of RCRA. The exception to this provision is the case where it can be shown that the waste material removed from the gas that is recovered from the landfill meets any of the characteristics identified under section 3001 of RCRA.

EPA's determination that methane gas recovery processes should be subject to regulation under subtitle C of RCRA is not to be constrained by the factors set forth in this amendment. A finding that the waste material removed from the gas meets a 3001 characteristic is just one of many factors that might justify an EPA decision to regulate the process of extracting wastes from landfills to recover methane. Such a finding is not necessarily a prerequisite to an EPA decision to regulate such processes under RCRA.

Mr. BENTSEN. Mr. President, a lot of these operators are small operators and would not get involved in this business because they cannot afford to be exposed to the kind of liability in Superfund. Therefore, we would not accomplish the utilization of the methane gas from landfills. This amendment changes the definition of "owner-operator." I believe it is a progressive step and would be helpful. We suggest adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 649) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I would like to bring to the attention of the Senate a grave problem that exists in qualifying Louisiana's hazardous waste sites for funding under the current Superfund Program. Namely it is a question of equity and fair dealing and directly involves application of the hazardous ranking system [HRS] criteria to the geological characteristics of Louisiana.

The inability of this system to adequately address my State's hazardous waste sites is especially disconcerting given the large monetary Superfund contribution that is made by Louisiana-based petroleum and petrochemical industries. For example, during the past 5 years petroleum refiners and petrochemical manufacturers in Texas and Louisiana paid approximately 40 percent of the crude oil taxes and 80 percent of the petrochemical feedstock taxes; even though we only have 3 percent of the hazardous waste sites that are eligible for Superfund cleanup. In contrast, New Jersey contains 16 percent of the total number of hazardous waste sites, yet the industry in that State contributes only 2 percent of the petrochemical feedstock tax and 3 percent of the crude oil tax.

Two factors contribute to this regional discrepancy between funding of the program and cleanup of sites. First and most important is the inadequacy of the Mitre Model to take into account the geological characteristics of Louisiana. Second, is the inability of the petrochemical and petroleum industries to pass along the feedstock taxes to consumers.

As you know, Mr. President, when the Superfund Program was implemented in 1980, it was funded primarily by a petroleum tax and a chemical feedstock tax that was levied on 42 chemicals, many of which are not hazardous themselves, but which comprise the building blocks of hazardous substances. It was generally believed that this tax would then be passed along through the production process and would ultimately be paid by the consumer. However, this has not happened. Rather, it appears that 12 companies are paying 70 percent of the tax and that due to current market conditions these companies are unable to pass this tax along to the consumer. Furthermore, it appears that the overwhelming majority of these companies are located in the South, primarily in Louisiana and Texas.

Mr. President, the petrochemical and petroleum industries are the prime industries in my State. They are credited with developing Louisiana's economy, including new jobs for construction of these production facilities and the thousands of jobs at these plants themselves. More than any other category of industry to this time, these industries have transformed Louisiana's economy from a primarily agricultural economy to one of the leading petrochemical production forces in our country.

Beginning in 1979, and with more detail as new Federal hazardous waste requirements were added into Louisiana's regulations, stringent permitting requirements have been set for treatment, storage, and disposal of hazardous wastes that were and are attributable to Louisiana's industries. In general, Louisiana's businesses have responded well to these requirements. There is an improving track record of protection of the public and the environment from hazardous wastes that are now being generated, or that will be generated and managed in the future.

However, we still have a legacy of improper management of hazardous sites from the past. This happened for a variety of reasons. Federal and State hazardous waste management regulations in the past were sketchy or nonexistent, so that industry was not provided with sufficient guidelines or regulatory requirements. Some technologies once thought to be adequate for proper management of waste have not worked well and some waste disposers were careless or negligent, thus contributing to the problems that must now be solved.

Mr. President, there are currently 337 sites in Louisiana that EPA determined to be potential hazardous waste sites. The Louisiana Department of Environmental Quality estimates that 60 of these sites will turn out to be actual sites. The State needs Federal Superfund moneys to help clean up these sites. However, it appears that the current Superfund regulations are biased against solving Louisiana's problems. Under this system, Louisiana has found it very difficult to qualify sites for the national priorities list, which is the first step in qualifying for investigation and cleanup assistance from Superfund.

There are several reasons for this and I would like to briefly mention them. The hazardous ranking system [HRS] is the scoring and ranking model employed by EPA for qualifying sites for the national priorities list. The HRS model scores candidate sites as to three potential routes of exposure of the public and the environment to releases from hazardous sites; namely, ground water releases, surface water releases, and air emissions. For both surface and ground water releases, high scores can be obtained only if there are significant population exposures through drinking water contamination threats within a 3-mile radius of the site. This ranking system has worked against Louisiana's interests for the following reasons:

First, no inactive or abandoned hazardous waste site so far scored in Louisiana is within 3 miles upstream of a public drinking water supply system surface water intake. This is because most of the sites are located in areas of the State primarily using ground water;

Second, most inactive or abandoned waste sites in Louisiana are in relatively sparsely populated areas, or areas in which public water wells are more than 3 miles from the site. The Federal HRS model acts like a triage screen, which concentrates attention on large population exposures to toxics and gives relatively little weight to potential toxic exposure to small populations in rural areas; and

Third, no active or abandoned hazardous waste site as yet actually contaminated a drinking water source. Most sites are in areas where ground water contaminants move toward drinking water aquifers relatively slowly. Few sites are old by comparison to similar sites in the older industrialized States such as New Jersey, New York, and Massachusetts. As above, the HRS scoring tends to be biased toward high scores for sites that have actually contaminated drinking water supplies. This means that relatively little scoring weight is given to Louisiana's needs to stop ground water threats before contamination actually happens. Within a few decades, perhaps, many sites in Louisiana will have aged enough to qualify just like sites in New Jersey do, today. Waiting for this eventuality will neither be in the interest of Louisiana nor the Nation as the cost differential for cleanup after drinking water contamination has occurred is staggering.

EPA's strong reliance on already existing damage to usable ground water aquifers is especially damaging to Louisiana's attempts to qualify sites for the NPL. This is so because the Mitre Model, the model that is used in the HRS scoring gives few points for potential damage to deep water aquifers. Rather, in order to score points, the Mitre Model requires the State to prove that there is a connection between the ground water resources and the underlying deep aquifer. In technical terms, the model wants the State to show that there exists "least permeable continuous confining layers." Without such a showing, EPA presumes that there is no connection between the water systems and therefore, the site is not given many points.

The problem with this grading system is that it does not recognize the unique hydrological features of Louisiana. The State's entire water regime acts as one system, and, in fact, to geologists who are accustomed to working with soils and ground water in southern Louisiana, it has become an acceptable fact that the water table acts in concert with, and is an integral part to, the underlying aquifers. In essence, the entire ground water regime, from the water table to the deepest freshwater aquifer, acts as one system.

Mr. President, the Louisiana Department of Environmental Quality developed a position paper which explains in detail how the shallow water aquifer and the deeper artesian aquifers interconnect in southern Louisiana. This paper concisely describes how a waste may seep through layers of Pleistocene clays and why this geographic situation cannot be recreated in the laboratory setting. This paper has been reviewed and verified by the District Chief of the Department of Interior's U.S. Geological Survey Water Resources Division. I ask unanimous consent that a copy of the position paper and the comments of the USGS District Chief be printed in the Record immediately following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

I would now like to take a moment to apply this information to the Louisiana situation. The Department of Environmental Quality has identified 27 sites as either Superfund or potential Superfund sites. Five of these sites have already been listed on the NPL and one site is on the proposed list of NPL sites. Of these 27 sites, 19 have the potential of contaminating the Chicot and Norco aquifers. These acquifers are the prime drinking water sources for the all of southern Louisiana. However, given the EPA ranking system, it will be an uphill battle to qualify any of the 19 sites for the NPL list.

Mr. President, given my State's inability to have its unique geographic characteristics adequately considered under the current regulations, I was pleased to see that the committee reported bill requires the President to revise the national hazardous substance plan to make sure the system accurately assesses the relative degree of risk to human health and environment posed by sites and facilities. I believe the situation in Louisiana that I have just described is but one example of the flaws that are apparent with this system. I am sure other States will be able to demonstrate similar shortcomings.

Exhibit 1

The Interconnection of the Shallow Water Table Aquifer With the Deeper Artesian Aquifers in Southern Louisiana, April 26, 1985

To most geologists accustomed to working with soils and groundwater in southern Louisiana, it has become an accepted fact that the water table acts in concert with, and is an integral part of, the underlying aquifers. In essence, the entire ground water regime, from the water table to the deepest freshwater aquifer, acts as one system. Each component of this system, including the aquitards, has a measurable contribution to the flow of water within the system. While the geology of the Gulf Coast Regional Aquifer System is well known, and therefore not documented herein, we are just now beginning to appreciate the amount of interconnection between the components of the system.

Several studies, some of which are used as backup documents for this position paper, have shown that the degree of leakance through the aquitards and aquicludes is much higher than previously suspected. While this interconnection is a complex issue, three primary factors contribute to this condition: (1) the artesian nature of the entire system; (2) the heterogeneity of the aquifer materials; and (3) the physical structure of the Pleistocene clays.

Due to the Gulfward-dipping attitude of all the strata in Louisiana, the major aquifers in the system are under artesian pressure. This pressure acts in three dimensions, producing a complex pattern of groundwater flow between the discrete aquifers of the system. These complex pressure gradients are acting on the intervening clays, producing leakance values far different than those predictable by means of laboratory-produced data.

The second factor involves the character of the geologic materials that make up the aquifer system. Due to their depositional history, deltaic and alluvial deposits consist of beds that are very hetergeneous. A bed classified as clay may contain lenses of coarser material, as well as coalescing and bifurcating stringers of sand. Even though in one dimension there appears to be a discontinuity of sediments, groundwater and contaminants are able to move, albeit circuitously, through the aquitards. The attached cross-section, developed through ongoing work by the USGS, demonstrates this heterogeneity in an area south of the Baton Rouge Fault, similar to the Dutchtown site.

This heterogeneity is also documented in the enclosed Louisiana Highway Research Report "Pressuremeter Correlation Study". Although this study mainly investigates engineering parameters, the study does document the minute variations evident in Pleistocene clays. The Houma and Plaquemine sites are Recent clays. The Sorrento site (at depth), Perkins Road and Lake Charles sites evaluated Pleistocene clays.

The physical structure of the Pleistocene clays has a major role in groundwater flow. The megascopic structure of these clays in the Gulf Coast cannot be reproduced in the laboratory where soil samples are either remolded, or taken on such a small scale that the gross structural aspects are negated. The most widespread and dominant structure feature is the "slickenside". This fracture pattern was produced when the clays were differentially consolidated during burial and the rise and fall of sea level during glacial periods. Slickensides are a prevalent, non-predictable fracture feature which form preferential pathways of migration for fluids.

Although the reference "The Effects of Conventional Soil Sampling Methods on the Engineering Properties of Cohesive Soils in Louisiana" primarily explores the effects of sampling and handling on soil engineering properties, it also documents the extent and prevalence of these fractures and slickensides throughout Pleistocene and Recent clays in Louisiana. Also documented in the report are the geochemical effects of groundwater migration through the soils dissolving and precipitating minerals such as calcium and pyrite. This reference additionally includes a good general description of geology in Louisian.

A particular case demonstrating this factor is at the BFI (CECOS) Willow Springs facility in Louisiana, where contaminants were shown to be migrating through slickensides across silt lenses. The source of this contamination was a series of old pits dug in the native clay. The enclosed photograph and report depict this situation.

Although not proven through observation, as in the case of Willow Springs, the BFI (CECOS) facility in Livingston Parish, Louisiana clearly demonstrates movement of contaminants through clays which was not predictable by laboratory permeabilities. It is our contention that the heterogeneity of the confining Pleistocene clay provides "conduits" for the movement of contaminants through sand lenses and silt stringers to the underlying aquifers.

All the major aquifer systems in Louisiana evidence these three factors to one degree or another. Although boundaries between the systems can be theoretically drawn, all the systems overlap and interconnect with each other. The same geological processes produced all the Pleistocene aquifer materials and aquitards throughout the southern part of the state; thus the groundwater movement through these geologic materials has similar flow patterns throughout this region.

These are only a few of the observations and case situations that have lead to the conclusion that all groundwater in southern Louisiana acts as one system from the water table to the lowest freshwater aquifer.

George H. Cramer II,
Assistant Administrator, Hazardous Waste Division, Louisiana Department of Environmental Quality.

U.S. Department of the Interior,
Geological Survey, Water Resources Division,
Baton Rouge, LA, May 6, 1985.

Ms. Patricia L. Norton,
Secretary, LA Dept. of Environmental Quality, Baton Rouge, LA

Dear Ms. Norton: We have reviewed the Position Paper on "The Interconnection of the Shallow Water-Table Aquifer with the Deeper Artesian Aquifers in Southern Louisiana", and find the hydrogeology to be conceptually correct. Our work has dealt more with the first two factors, those of artesian pressures and aquifer materials, than with the physical structure of the clays. However, the documentation by other investigators on the "slickensides" supports its occurrence and the fracture phenomena is just another means by which water can preferentially move downward through low hydraulic conductivity materials.

The basic concept that we have formulated through our studies over the years is that the aquifer systems in southern Louisiana are described as leaky. In other words—because of heterogeneity of the materials, fractures in the clays, plant roots, and animal burrows—avenues for preferential flow have developed. The average vertical hydraulic conductivity is low when considered on a regional basis, but in those places where there is preferential flow routes, the hydraulic conductivity can be many orders of magnitude higher.

The stratigraphy and structure of the deltaic deposits, as found in southern Louisiana, are characterized by heterogeneity and thus allow for higher vertical flow rates than homogeneous clay alone would allow.

We hope our review has been beneficial and within the framework of the cooperative program; we always are pleased to help with water-resource problems.

Sincerely yours,

Darwin Knochenmus.

Mr. JOHNSTON. Mr. President, in my statement I have described how the hazardous ranking system fails to take into consideration the unique geological characteristics of Louisiana. I was wondering if it might be possible to ask the managers of the bill whether they think Louisiana's situation should be addressed by EPA as it tries to develop and improve its NPL ranking system.

Mr. STAFFORD. The Senator from Louisiana has correctly stated that S. 51 requires EPA to amend its hazard ranking system to more accurately assess the relative degree of risk to health and the environment posed by sites and facilities. The points raised by the Senator regarding Louisiana's geology are certainly examples of the type of situation the committee intended EPA to review before amending the hazard ranking system.

Mr. BENTSEN. Mr. President, the Senator from Louisiana raises some important concerns related to the geology of Louisiana. It is certainly my view that this situation be addressed by EPA as it revises the hazard ranking system.

Mr. STAFFORD. Mr. President, for the information of our colleagues, we are anticipating that the Senator from Minnesota [Mr. Durenberger] will arrive in the Chamber shortly to offer an amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, this afternoon, I wish to offer a few general remarks on the legislation that is before the Senate, the Superfund Improvement Act of 1985.

Let me begin by commending the distinguished chairman of the Committee on Environment and Public Works, the Senator from Vermont [Mr. Stafford] for successfully seeing this major piece of legislation to the floor of the Senate. There have been many days of hearings and markups on this bill, both in this session and over the last 2 years in the committee. The bill has been reviewed by three separate Senate committees and will be the subject of many amendments here on the floor.

Superfund is a very complicated program with many very technical aspects that must be reviewed in the authorization process. That we are here on the floor of the Senate, wrapping up the last stages of the reauthorizations, is a testament to the skill and the patience of the Senator from Vermont.

Let me also say, Mr. President, that this is not the only piece of major legislation that has come from the Environment and Public Works Committee this year. We have already considered the Clean Water Act amendments and the Safe Drinking Water Act amendments. The omnibus water resources bill is also on the Senate Calendar. There has been much that has been accomplished by the committee this year. So it is appropriate that, during the discussion of Superfund, many Senators will have remarked on the productivity of the committee under the leadership of the Senator from Vermont and the unparalleled skills of the ranking member, the Senator from Texas [Mr. Bentsen]. Our colleagues will rise to admire their skills in assuring that the legislative work of the Senate gets accomplished.

Turning now to the subject at hand, Mr. President, I must confess that throughout the entire process of Superfund reauthorization, I have been somewhat ambivalent about the issues before the committee and now before the Senate. On the one hand Superfund is an extremely important program that offers needed protection to the environment and millions of Americans exposed to hazardous substances being released from thousands of sites across the country. On the other hand, Congress has been under constant pressure to turn this critical piece of public health legislation into just another public works program that will put the names of politicians in hometown headlines.

As I look at the bill that we have produced and the amendments that are before us, I see much that adds to the strength of the program. We will be increasing the funding for the program about fivefold when the process is completed. We will be adding tough, new, and much-needed provisions to assure that Federal agencies like the Defense Department and the Department of Energy adhere to a tight schedule of cleanup at facilities they own and operate. We will be authorizing health assessments at Superfund sites and will be giving the toxicologists new resources to increase our knowledge of the health effects of various chemicals which are released into our environment everyday. Perhaps, most important, we have decisively rejected the suggestions made by some that the liability standard now applied at Superfund sites be substantially weakened.

So there is much that is good in this bill. But there are also other items that trouble me. In 1980, when Congress first embraced this problem, it was intended that Superfund would be a new kind of environmental statute. It was not to focus on any specific natural resource or any specific type of pollution. It was to be a generic program that was to address all forms of releases of substances that could be hazardous to human health or valued natural resources.

Superfund was not conceived to be principally a regulatory program. It was intended that a combination of feedstock taxes to pay for cleanups and strict, joint, and several liability imposed on responsible parties would work in tandem to prevent and correct releases.

So the 1980 law was a fundamental departure from past programs and represented a concerted effort to put new principles of environmental protection into Federal law.

As we have gone through the hearings and markups on Superfund over the past 2 years, I have often returned to those fundamental principles of the program to ask myself whether the proposals before us would extend the program along paths begun in 1980 or are we instead, being asked to make the public rather than the polluter pay and to edge away from full liability for responsible parties.

I think my colleagues must agree that—at least in the financing title of this bill—we are beginning to abandon the polluter-pays principle. The manufacturers' excise tax which is the revenue engine of this new authorization effectively breaks any connection between the cause of the releases—that is the production and use of hazardous substances—and the remedy for releases—a national fund to pay for cleanups.

I think that everyone well understands why the tax has been shifted away from feedstocks and why a waste end tax—another variation of polluter pays—was not adopted. Neither of those taxes would produce sufficient revenue to run a program of the size that we now realize is necessary. The Congress has been convinced that a waste-end tax of more than $1 billion per year would not be a reliable source of funding.

As the Senator from Rhode Island [Mr. CHAFEE] argues so convincingly, it is not that we fear falling short of the needed revenue that has kept us from adopting the waste-end tax. It is the effect that a huge waste-end tax might have. It would encourage the taxed parties to seek exclusions from this program and from the regulatory regime under RCRA, even though the materials in question pose substantial hazards to the public and the environment.

In the Senate Finance Committee most members were persuaded that a very large increase in the feedstock tax would have negative consequences for the American chemical industry which today is one of the few industries that contributes a positive balance to the international trading position of our country.

So everyone knows why we have moved to a broad-based tax. But I do not know that everyone fully appreciates how this change in tax mechanisms also changes the underlying philosophy of the program in ways that have important implications on the spending side of the equation, as well.

Take for example the provision in the 1980 law which allows States to file claims against the fund for compensation for the loss of natural resources. This provison has not been implemented fully, because the Department of the Interior failed to produce the necessary regulations. And now the Senate and the House have been asked to extend the deadline for filing natural resource damage claims that have been developed by the States.

On its face the natural resource damage claim provision of the existing law is a curious component of the Superfund Program. It appears that the Federal Government is being required to make payments to the States to compensate them for losses that were caused by actions of parties in the private sector who were wholly unrelated to the Federal Government. Why in the world should all the taxpayers of the United States compensate the State of South Dakota, for instance, for losses that were caused by a business concern operating under South Dakota law? That does not seem to make sense.

The answer under Superfund as it exists, of course, is that all the taxpayers of the Nation are not being required to compensate the State of South Dakota for its loss. Under Superfund as it exists the cost of compensation is taken from a fund financed by the tax on chemical feedstocks which are used in the production of the kinds of hazardous substances that have caused natural resource damages. There is connection between the source of the damage and the source of the compensation.

But that is only a good explanation of the damage claims provision under the law through 1985. The reauthorization that we are about to adopt puts Superfund on a new foundation, establishes a new set of fundamental principles. It will now be the general taxpayers of the Nation who will bear the burden of any natural resource damage compensation because we are financing Superfund with general excise tax. Do natural resource damage claims continue to make sense in that context? I think not.

Mr. President, I am very much opposed to the manufacturers' excise tax that we have in the bill before us. I appreciate the dilemma that faced the Finance Committee when it designed this tax, because I am a member of the Finance Committee. We needed to raise $7.5 billion and there was no certain way to achieve that amount and stay close to the polluter-pays principle. But I think this new revenue title moves much too far in the direction of a general fund tax and it is my hope that in conference with the House we will find some middle ground between this bill and the fundamentals of the current program.

Mr. President, there is another aspect of this reauthorization package that has troubled me a great deal and that is the relationship between the Federal Government and the States that is established by this program. The 1980 law built a program with a very strong Federal Government component. The Federal Government imposed the tax. The Federal Government wrote the priority list. The Federal Government designed the cleanups to meet Federal standards. The 1980 Superfund was a very national program for what was perceived to be a national problem.

States were, some thought, even preempted for imposing a feedstock tax on the same chemicals for the same purposes. States were obligated to bear 50 percent of the costs for sites that were on lands that they owned. Localities would eventually bear the full cost of cleanup at landfills that they owned and operated. There was no grant to the States to run the administrative side of their own cleanup programs. The 1980 law was very much a Federal emergency action designed to protect Americans wherever they lived from immediate and substantial hazards. Superfund was the farthest thing from a public works block grant to the States that has been less than vigilant in protecting their own natural resources.

But we see here in 1985 a virtual parade of amendments to make Superfund the porkbarrel of first resort. The tax preemption has been lifted. The 90-to-10 match has been extended from the cost of cleanup to the cost of operation and maintenance, as well. States are being forgiven their 50 percent share at sites owned by the States. Credits for expenditures at one site are being allowed to pull down the 90 percent match at another site. A floor amendment will be offered to create a new grant program out of Superfund to pay for cleanup at sites that are not on the national priority list.

And that is just the Senate bill. Over in the House, much more is promised.

State expenditures on administration and litigation are allowed as a match against Federal cleanup spending. And there is a State credit feature in the House bill that, I believe, will be the proverbial straw that breaks the camel's back.

Under the language reported by the Energy and Commerce Committee in the House, a State may make whatever authorized expenditures it chooses to today and it will thereby guarantee that nine times that amount in Federal dollars will be spent at that site or in that State at other sites in the future. Testimony before the Senate Environment and Public Works Committee indicates that New Jersey intends to spend about $240 million on its Superfund cleanup program during the 1985 and 1986 fiscal years. Under the House bill, the Federal Government will be obligated to spend nine times that amount or $2.16 billion—about 30 percent of the total 5-year program we are authorizing—in New Jersey at some point in the future. It's guaranteed. We are making New Jersey an appropriations subcommittee of the U.S. Congress because through this advance credit mechanism they will control the future direction of the Superfund Program.

Should four or five States make the decision to invest substantial funds in eligible activities—and almost everything from administration to litigation to construction is eligible under the House bill—in the next year or two, the rest of the Nation could find itself virtually shut out of the program because all of the funds would already be under obligation through this credit mechanism. Mr. President, I think that is unfair and I think that it fundamentally changes the underlying philosophy of the Superfund Program.

Even under current law, spending is already concentrated in a few States. I ask unanimous consent that a short article and table of statistics from the August 15, 1985, issue of the Washington Post be printed in the RECORD at this point, Mr. President.

This article shows where in the Nation that Superfund dollars have been spent in the fiscal years 1982, 1983, and 1984. Sixty percent of the funds have been spent in just six States, New Jersey, New York, California, Missouri, Pennsylvania, and Massachusetts. Fifteen percent of the dollars have gone to New Jersy alone.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 15, 1985]

WHERE SUPERFUND MONEY GOES

A handful of states accounted for nearly 60 percent of the funds obligated for hazardous waste cleanup under the Superfund program in fiscal 1982-84, according to a new study.

Because the Superfund program is not a grant program, the Environmental Protection Agency does not keep track of how much money goes to each state. But the Federal Funds Information for States, a computerized data base sponsored by the National Governors' Association and the National Conference of State Legislatures, has prepared a breakdown of where the funds were distributed.

It found that three states—New Jersey, Missouri and California—accounted for nearly 40 percent of the funds obligated. When New York, Pennsylvania and Massachusetts were included, the six accounted for 60 percent of the obligated funds.

Five states—Alaska, Mississippi, Nebraska, Nevada and South Dakota—had no sites designated for cleanup and no funds obligated during that period. States in the industrial Northeast, where larger volumes of hazardous waste were disposed in the past, tended to receive more of the funds.

EPA decides whether to include sites nominated by the states on the Superfund priorities list. Funds are distributed as the cleanup takes place. All together, $335 million was obligated in 1982-84, but only $91 million was actually spent.

[Dollar amounts in thousands]

	Obligations	Share (percent)
State:		
Alabama	$34	.01
Alaska		
Arizona	8,956	2.67
Arkansas	3,046	.91
California	38,478	11.48
Colorado	3,620	1.08
Connecticut	1,394	.42
Delaware	2,575	.77
Florida	7,538	2.25
Georgia	732	.22
Hawaii	50	.01
Idaho	139	.04
Illinois	5,715	1.70
Indiana	3,679	1.10
Iowa	2,287	.68
Kansas	350	.10
Kentucky	2,293	.68
Louisiana	2,810	.84
Maine	1,090	.33
Maryland	1,511	.45
Massachusetts	20,035	5.98
Michigan	11,778	3.51
Minnesota	5,993	1.79
Mississippi		
Missouri	40,149	11.98
Montana	3,170	.95
Nebraska		
Nevada		
New Hampshire	11,570	3.45
New Jersey	51,598	15.38

[Dollar amounts in thousands]

	Obligations	Share (percent)
State:		
New Mexico	1,485	.44
New York	28,874	8.59
North Carolina	2,394	.71
North Dakota	250	.07
Ohio	10,155	3.02
Oklahoma	5,875	1.75
Oregon	139	.04
Pennsylvania	23,327	6.96
Rhode Island	4,116	1.23
South Carolina	2,551	.76
South Dakota		
Tennessee	828	.25
Texas	11,919	3.56
Utah	15	
Vermont	360	.11
Virginia	1,884	.56
Washington	7,836	2.33
West Virginia	554	.17
Wisconsin	300	.09
Wyoming	50	.01
Territories	300	.09
Puerto Rico	1,430	.43
Total	336,217	100

Source: Federal funds information for States (obligations for fiscal 1982-84).

Mr. DURENBERGER. Under Superfund as it existed from 1980 to 1984, the issue of State shares did not even arise. There is no formula for the program. No maximums or minimums for any State. And that was quite appropriate, Mr. President. For under the program as it existed, those who produce and use hazardous substances were taxed to cleanup sites that were caused by the release of those substances according to a priority list that had the Nation cleaning up the most dangerous sites first. If that resulted in all the money being spent in one State, then so be it.

But that is not the program that is contemplated in the bill before the Senate. And the result of combining the Senate financing scheme—which imposes a general excise tax—and the House programmatic amendments—which turn the priority setting powers within the program over to the States through this advance credit mechanism—runs the risk of turning Superfund, which has been an important program to protect public health, into just another public works program to please the folks back home. That would be a tragedy, Mr. President.

There are ways, of course, to prevent that outcome. I have floated the idea of a cap on the amount of remedial funds that could be spent in any one State in any 1 fiscal year. We could set the cap at 15 percent for instance. That is the average percentage that New Jersey has received over the last 3 years.

Again, New Jersey has received the largest share. 15 percent would be about $225 million per year, if the program was spending out at about $1.5 billion. but Senators should realize that even 15 percent, even $225 million, would only provide New Jersey with about a 2-to-1 match against their planned expenditures. Not the 9 to 1 that the House is guaranteeing in advance.

Mr. President, I shall not offer a cap. The debate on a cap amendment would be acrimonious. It would slow down consideration of the program here on the floor of the Senate. So I shall not offer the amendment.

I shall rely instead upon the steady hand of the chairman in conference. The bill he brought to the floor of the Senate is a balanced bill. It is not so much the Senate bill I have spoken against, but the porkbarrel we expect from the House that worries me. I have raised the issue. I shall continue to watch the development of this legislation and raise the issue again, if needed. I do not envy any State its need for Superfund dollars. What to do with hazardous waste at inadequate facilities continues to be a national problem of crisis proportions. And a national response is appropriate.

All I ask is that the needs of each State be balanced with the needs of all other states in a truly national program designed to protect public health and the environment wherever it is threatened.

That, Mr. President, is the purpose of Superfund as it was enacted by the Congress in 1980 and it is the principle in Superfund that has made it such a special part of the national commitment to environmental protection. We must not sacrifice the fundamental design of this public health law to the politics of public works in the Congress.

It was in large part the vigilance and skill of the Chairman of the Environment and Public Works Committee that put Superfund into the law in 1980, that saved it from negligence and outright hostility at the Environmental Protection Agency in 1981 and 1982 and that has seen this reauthorization to the floor after two years of debate and consideration. And we trust that his abilities as a legislator and his commitment to the principles of Superfund will see us through the completion of this Senate action and a conference with the House. With that, Mr. President, I yield the floor, thanking the managers of the bill for allowing me this opportunity to share my views.

AMENDMENT NO. 650

Mr. DURENBERGER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 650.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end thereof add the following new Sec.

"Not later than October 9, 1985, the Director of the Office of Management and Budget shall complete his review and make available for publication in the Federal Register all of the proposed recommended maximum contaminant levels for those organic and inorganic chemicals published by the Administrator of the Environmental Protection Agency in volume 48, Federal Register, page 45502 and submitted by the Administrator to the Director prior to April 30, 1985."

Mr. DURENBERGER. Mr. President, one of the most difficult issues that the committee has had to face in the Superfund debate is the so-called "How clean is clean" issue. Under current law the Administrator of the Environmental Protection Agency is granted broad discretion to determine how much effort will be made to clean up a Superfund site and how much contamination will be allowed to remain when the job is completed.

Many have advocated that Congress require that the Administrator use some more objective standard to answer the question, "How clean is clean." For instance, there is legislation in the House that would require that Superfund sites be cleaned up to the level of the health-based standards that have been established under other laws, like the Clean Air Act, the Clean Water Act or the Safe Drinking Water Act.

The problem with that proposal in that to date the Agency has been practically incapable of setting health-based standards under those other statutes. There are virtually no well-developed health-based standards that can be used in making cleanup decisions at Superfund sites.

Let me be specific as the point I am making relates to the Safe Drinking Water Act. In 1974 Congress passed the drinking water law. Under that act, EPA was charged with the responsibility to develop two types of drinking water standards that would set upper limits on each of the many contaminants that have been found in drinking water supplies.

The first type of standard, called "Recommended Maximum Contaminant Levels or RMCL's," are to be entirely health-based. The Agency is instructed to survey the drinking water supplies of the Nation to determine which specific contaminants are present. Then it is determined through health effects research whether any of those contaminants may present any adverse health consequences for consumers. And finally it is to establish the recommended maximum contaminant levels at a point where no adverse health effects will occur.

After the RMCL or health goal is established, the Agency then develops a second, regulatory standard called the "Maximum Contaminant Level or MCL." These standards are intended to be as close to the health goal as possible taking into account the ability of available drinking water treatment technology to purify water that has been contaminated.

When Congress passed the drinking water law in 1974, there were 16 MCL's already on the books that had been established by the Public Health Service in the early 1960's. They were primarily for biological contaminants and for heavy metals which often occur in groundwater supplies naturally.

But the Nation discovered in the early 1970's that its drinking water supply was also threatened by hundreds of manmade synthetic organic chemicals. By shifting the program from the Public Health Service to the Environmental Protection Agency and mandating that health-based standards be set for all contaminants found in drinking water, the Congress intended to take a large step in protecting the health of the American public.

Unfortunately very little has happened in the 11 years that the Drinking Water Act has been down at EPA. MCL's for only seven more contaminants have been set and many of those are for pesticides that have already been banned for use in the United States.

Mr. President, despite this sorry record there is always cause for hope. There are several events that have occurred this year that suggest that the Drinking Water Program might finally be getting under way. Both the Senate and the House have passed bills to reauthorize the program and set deadlines for publishing standards. Conferees have been appointed to resolve the differences between those bills and I want to report to my colleagues that discussions at the staff level are going quite well and we look forward to moving the conference rapidly, as soon as Superfund is completed here on the floor.

And things are starting to move down at the Agency, as well. We can expect proposed MCL's to be published for eight volatile organics in the next few weeks. And the Agency has sent proposed RMCL's for 40 more synthetic organic chemicals to the Office of Management and Budget for review.

Mr. President, it is the fate of those 40 RMCL's that brings me to the floor of the Senate this afternoon. EPA sent their proposals to OMB for review on April 9 of this year. The review was to be conducted under provisions of the Executive Order 12291 which gives OMB a full 60 days, but only 60 days, to complete its review and return the proposal and its comments to the Agency. But it has been more than 5 months, Mr. President, and EPA has not yet heard from OMB on these health-based standards for 40 drinking water contaminants.

The delay in releasing the proposed RMCL's caused the leadership of the Committee on Environment and Public Works to send a letter to Joseph Wright, Acting Director of OBM, on August 1, asking that he release the EPA proposed RMCL's or state why he had not yet done so. That letter was, as I say, sent on August 1. This is September 19. So far, there has been no response to the members of the Environmental Committe on their request.

After 6 weeks of waiting, the distinguished chairman of the committee, Senator STAFFORD, joined with Senator BENTSEN, Senator BAUCUS and myself to send a second letter to OMB asking again that the RMCL's be released. That letter is also addressed to Mr. Wright and is dated September 6. Since we had not had a reply to our previous communication, we also wrote the Administrator of the Environmental Protection Agency. We suggested to Mr. Thomas that he, acting on authority which the Justice Department has stated he possesses, that he simply publish the proposed RMCL's in the Federal Register without waiting any longer for OMB's review. Mr. President, I would ask that the letters to Mr. Wright and Mr. Thomas also be printed in the RECORD with my comments today.

Well, we've written three letters from the leadership of the Environment Committee and the subcommittee with jurisdiction and we have yet to hear anything at all on the fate of the proposed health standards which were sent to the President of of the United States by This Administrator of Environmental Protection.

Which brings me to the floor and this amendment. Mr. President, the amendment is very simple. It only requires that the Office of Management and Budget act as required by Executive order and release the proposed RMCL's for publication in the Federal Register. The amendment sets a deadline for this action of October 9, 1985. Mr. President, this is a necessary amendment. That is established by the facts I have laid before the Senate in the last few minutes. I hope that the manager of the bill can also agree that it is an appropriate amendment to Superfund, since the health-based standards under the Drinking Water Act play an important role in deciding "How clean is clean" under Superfund.

Mr. President, I ask unanimous consent to have printed in the RECORD letters directed by me and a number of my colleagues on this committee, including the chairman and the ranking minority member, to the Acting Director of the Office of Management and Budget.

There being no objection the letters were ordered to be printed in the RECORD, as follows:

U.S. Senate,
Committee on Environment
and Public Works,
Washington, DC, August 1, 1985.

Hon. Joseph R. Wright,
Acting Director, Office of Management and Budget, Old Executive Office Building, Washington, DC.

Dear Mr. Wright: We are writing to express our concern about the lengthy delay in completion of the Office of Management and Budget's review of proposed Recommended Maximum Contaminant Levels (RMCLs) for 30 drinking water contaminants. EPA's Office of Drinking Water sent these proposals to OMB on April 9, 1985 for your review which has yet to be completed nearly four months later. This appears to be an excessive amount of time for evaluation of the Agency's scientific basis for setting RMCLs under the drinking water statute. The 30 Phase II contaminants submitted for review are those that the Agency believes may have adverse effects on human health in accordance with their standard-setting responsibility under the Safe Drinking Water Act.

In the eleven years since enactment of this statute, EPA's Office of Drinking Water has not fulfilled the public health protection objectives mandated by Congress. Drinking water standards constitute the regulatory foundation of the Act. However, only 22 such standards have been established by the Agency. This is totally inadequate in view of the hundreds of contaminant that have been detected in public and private water systems, many of which are synthetic organic chemicals of significant public concern.

Public health officials and constituents from each of our States have indicated their urgent need for these standards to make sound water supply decisions. In their absence, States have had to expend limited resources to develop standards without adequate scientific information. A Federal responsibility to issue standards was established under this Act to eliminate such duplicative and ill-informed State efforts.

The great concern over the lack of sufficient standards to adequately protect public health from drinking water. contaminants is reflected in amendments passed by the Senate and House that would significantly strengthen the standard-setting provisions of the Safe Drinking Water Act. Widespread concern about the Agency's historical inability to issue standards and indications of OMB resistance to the establishment of standards served as the impetus for the passage of schedules and deadlines in the Senate bill. It should be apparent from these actions that Congress intends that standards are to be set for drinking water contaminants in a responsible and timely manner.

Now that the Drinking Water Office has finally selected priority contaminants of public concern and gathered sufficient evidence on which to base RMCLs, we believe that your Office has a responsibility to review this information in an expeditious manner. Therefore, we ask that you allow EPA to publish the proposed RMCLs as soon as possible so they may begin to fulfill their regulatory responsibilities or provide an explanation for the excessive delay in completing your review.

Sincerely

Max Baucus,
U.S. Senator.
Lloyd Bentsen,
Ranking Member.
Dave Durenberger,
U.S. Senator.
Robert T. Stafford,
Chairman.

U.S. Senate,
Committee on Environment
and Public Works,
Washington, DC, September 6, 1985.

Hon. Joseph R. Wright,
Acting Director, Office of Management and Budget, Old Executive Office Building, Washington, DC.

Dear Mr. Wright: Having received no reply to our letter of August 1, 1985 regarding the proposed Recommended Maximum Contaminant Levels (RMCLs) submitted by the Administrator of the Environmental Protection Agency, we are writing again, for the following reasons:

First, to urge that you or your staff approve or disapprove the RMCLs without further delay;

Second, to express our belief that if you fail to act on the RMCLs, the Administrator should unilaterally propose them formally through publication in the Federal Register;

Third, to request an explanation for OMB failure to comply with the sixty-day time limitation on review imposed by Executive Order 12291; and,

Finally, if the reason for the delay is inconsistency of the RMCLs with Administration policy, to request a clear statement of that policy as it regards the contamination of drinking water supplies in the United States. Specifically, we would appreciate knowing whether and under what circumstances, if any, the Administration supports the promulgation of Recommended Maximum Contaminant Levels pursuant to the Safe Drinking Water Act.

We would appreciate your prompt attention to this request. For your possible use, a copy of our earlier letter is enclosed.

Sincerely,

Max Baucus,
U.S. Senator.
Lloyd Bentsen,
Ranking Member.
Dave Durenberger,
U.S. Senator.
Robert T. Stafford,
Chairman.

U.S. Senate,
Committee on Environment
and Public Works,
Washington, DC, September 10, 1985.

Hon. Lee M. Thomas,
Administrator, U.S. Environmental Protection Agency, Washington, DC.

Dear Mr. Thomas: Please find enclosed letters which we have written to the Acting Director of the Office of Management and Budget regarding proposed Recommended Maximum Contaminant Levels (RMCLs) submitted for OMB review pursuant to Executive Order 12291.

The purpose of this letter is to urge that you unilaterally propose the RMCLs if no action has been taken at the Office of Management and Budget by close of business September 13, 1985.

As you may recall, there was discussion during your confirmation hearing of the degree of independence which you would exercise as Administrator, especially with respect to the Office of Management and Budget. You responded to several written questions on this subject, including the following:

Question. In any case in which a law or other authority assigns the responsibility for making a decision to the Administrator of the Environmental Protection Agency, will you ever allow another person—assuming you are confirmed—to make the decision in questions?

Answer. No, unless I delegate the responsibility for actions other than rulemaking to another person in EPA consistent with the appropriate statute. Historically, and for the foreseeable future, EPA has not delegated signature authority for regulations.

Question. In those cases where the law sets forth the facts or other circumstances which you must take into account, will you fail to take such factors or circumstances into account?

Answer. No.

Question. If the law requires you to make a decision and sets forth the critera and these compel you to choose an option to which objection is raised on the grounds that it is not consistent with the Administration's policy, what will you do?

Answer. I will make my decision consistent with the statute. E.O. 12291 clearly addresses this point by exempting agencies from complying with Administration policy when that policy is not consistent with the applicable statute.

During the Confirmation hearing, you also stated that the Agency's progress in establishing standards under the Safe Drinking Water Act was "disappointing" but "I believe we have broken the back of that problem." The hearing was held seven months ago, on February 6, 1985.

On April 9, proposed RMCLs were forwarded to the Office of Management and Budget for review pursuant to Executive Order 12291, which limits the time for OMB consideration to 60 days. Even if OMB had approved the proposals within the 60-day period, it would still have been several more years before the RMCLs had any direct regulatory impact on the safety of drinking water in the United States. But OMB has not acted.

The Safe Drinking Water Act was enacted in 1974 because of widespread public concern over contaminated water supplies. In the intervening 11 years, contamination has not decreased, but increased. Indeed, EPA's own estimates are that one of every three large drinking water systems which rely on ground-water are contaminated by synthetic organic chemicals. State and local public health departments throughout the United States, as well as private suppliers of drinking water, justifiably look to the Environmental Protection Agency for guidance as to the acceptable level, if any, of such contamination. But this guidance is not forthcoming because regulations which you are required by law to propose are under review at the Office of Management and Budget.

We would appreciate knowing what action you propose to take with regard to the current impasse and would appreciate a response at your earliest convenience.

Sincerely,

Max Baucus,
U.S. Senator.
Lloyd Bentsen,
Ranking Member.
Dave Durenberger,
U.S. Senator.
Robert T. Stafford,
Chairman.

Mr. DURENBERGER. Mr. President, I wonder if this amendment is in a form and of a nature that is acceptable to the distinguished chairman and ranking minority member and if they would indicate to the Senate their view on the amendment at this time.

Mr. STAFFORD. Mr. President, we have examined the amendment offered by the Senator from Minnesota, a very valuable member of our committee, and, for the majority, we are prepared to accept it.

Mr. BENTSEN. Mr. President, I congratulate the Senator from Minnesota on what he is trying to do in expediting the regulatory process.

OMB has been holding this thing up since April 9 of this year with a review. I can understand some delay in regulatory decisions, but I think what we are seeing is excessive and unnecessary interference on the part of OMB.

I am delighted to see the amendment offered. On this side, I see no objection to it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 650) was

agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT FOR RADON DEMONSTRATION PROGRAM AND INDOOR AIR QUALITY

Mr. HEINZ. Mr. President, yesterday we passed an amendment introduced by my colleagues Senator MITCHELL, Senator LAUTENBERG, and Senator BRADLEY to provide for a demonstration program within the Environmental Protection Agency to research the impact of toxic chemicals on indoor air quality. Among the most serious chemicals that have been released inside buildings and homes is radon. Radon is a radioactive gas that is colorless, odorless, and tasteless, and which studies have shown can cause an increased risk of lung cancer.

The problem of radon releases is particularly acute in an area of the country called the Reading prong, which occupies a major portion of southern Pennsylvania. Unacceptably high levels of radon have been discovered in approximately 40 percent of over 1,400 homes tested in Berks County, PA, along the Reading prong. The cost to homeowners for remedial work to permanently lower these levels of radon gas can be as high as $20,000. Yet there is no comprehensive Federal program to even research this problem. Our amendment addresses this glaring gap in the EPA's research programs, and provides a modest amount of funding—$3 million in each of fiscal year 1986 and fiscal year 1987—for the Agency to at least begin to address this widespread and growing health problem. As a Senator from Pennsylvania, one of the most affected States, and as a cosponsor of this amendment, I urge my colleagues to support this effort.

AMENDMENT TO IMPROVE COMMUNITY EMERGENCY PREPAREDNESS AND RESPONSE

Mr. President, yesterday we passed an amendment, which I cosponsored, to improve the ability of all levels of government to respond emergencies caused by the release of dangerous substances. This amendment puts in place a series of mechanisms that will help State and local governments work efficiently and effectively to minimize the health hazards that arise from the release of hazardous substances into the environment. In addition, the amendment requires the Environmental Protection Agency to compile a list of extremely hazardous substances that will allow us to define the universe of chemicals that could provoke emergencies. Facilities handling these substances would be required to assist in resolving any such incident. We need only remember the recent tragedy in Bhopal, India, and the accidents in Institute, WV, to realize how essential it is that we develop the means to respond quickly to the release of hazardous substances into open air.

Mr. President, I urge the adoption of this amendment. It will remove the information gap that has thus far hindered our ability to plan for and react to chemical emergencies, and it will establish systems for governments at all levels to cooperate and properly utilize this vital information. I urge my colleagues to support this measure. It will help us prevent immediate problems from becoming serious and far-reaching disasters.

Mr. STAFFORD. Mr. President, I am unaware of any more amendments we can handle this evening. Unless my able colleague from Texas knows of another amendment to be handled tonight, I am prepared to suggest the absence of a quorum.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the name of the Senator from New Jersey [Mr. LAUTENBERG] be added as a cosponsor of the hazardous substances inventory amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

[From the Congressional Record, Sept. 20, 1985, pp. S11830-S11868]

SUPERFUND IMPROVEMENT ACT OF 1985

The PRESIDING OFFICER. The Senate will now resume consideration of the pending business, S. 51, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 651

Mr. STAFFORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration. This is a series of purely technical amendments, I might say, Mr. President.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for himself and Mr. Bentsen, proposes an amendment numbered 651.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 74, line 15, after "question." insert the following: "The Administrator of the Agency for Toxic Substances and Disease Registry shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of the Environmental Protection Agency.".

On page 77, line 16, after "1985," insert ", jointly with the Administrator of the Environmental Protection Agency,".

On page 77, line 23, after the word, "Administrator" insert: ", in consultation with the Administrator of the Environmental Protection Agency,".

On page 77, line 25, after the word, "Administrator" insert: ", in consultation with the Administrator of the Environmental Protection Agency,".

On page 78, line 6, after the word "with" insert "the Administrator of the Environmental Protection Agency and".

On page 81, line 17, after "trator" insert the following: "of the Agency for Toxic Substances and Disease Registry or the Administrator of the Environmental Protection Agency, as appropriate,".

On page 81, line 21, strike the period and insert in lieu thereof: ", or by the Environmental Protection Agency, as appropriate.".

Mr. STAFFORD. Mr. President, as I said in offering the amendment for Senator BENTSEN and myself, this is purely a series of technical amendments to a part of the bill. I know of no opposition to it.

I invite my colleague on the other side of the aisle to comment on these technical amendments.

Mr. LAUTENBERG. Mr. President, these amendments have been cleared on this side. We recommend adoption of the amendment.

Mr. STAFFORD. Mr. President, I know of no further speakers on this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 651) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 652

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Jersey [Mr. Lautenberg] proposes an amendment numbered 652.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 114, line 13, after the period insert the following: "The annual report required by this paragraph shall also contain a detailed description on a state-by-state basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States."

Mr. LAUTENBERG. Mr. President, this amendment expands the Federal facility reporting requirements in S. 51. It requires that annual reports be submitted to Congress on the status of cleanup efforts at all identified Federal facilities. These reports would be done on a State-by-State basis, and would provide a description of the hazard at the Federal facility site, the actions taken at the site, and plans, including a timetable, for future action. This amendment also requires the department, agency or other instrumentality submitting the reports to provide an explanation where there are no plans for future action.

This amendment builds upon the reporting requirements already in S. 51. The reporting requirements in the bill address Federal facility sites which are fairly far along in their evaluation. The reports required in S. 51 are required only for sites at which cleanup studies—called remedial investigation/feasibility studies—have already been done, and the various agencies involved in the cleanup are negotiating interagency agreements.

There are, however, a vast number of Federal facility sites at which no action has been taken beyond preliminary identification and assessment. In the last comprehensive report DOD prepared on its hazardous waste sites across the country, in December 1983, DOD had undertaken phase one studies at 257 installations. Phase one is equivalent to EPA's preliminary assessment. These studies precede consideration for listing on the national priority list.

At the same time, DOD had completed phase two studies at only 46 and initiated another 65. Phase two is equivalent to EPA's remedial investigation/feasability studies. Further, phase three and four—the actual cleanup at sites—had been conducted or initiated at only 17 sites.

Mr. President, this amendment is not meant to criticize the pace of the DOD program. There are important amendments in S. 51 that address the issue of pace. But I do mean to point out that the majority of DOD sites, and I would suspect this is true for other federal facility sites, are in the initial identification and assessment stage, and would not be covered by the reporting requirements of S. 51 for the near future.

Yet residents of my State and other States are concerned about the full universe of sites. In many ways, the sites where little action has been taken are of greatest concern. The magnitude of the Federal facility site problem is astounding. DOD alone estimates that it will spend $5 to $10 billion to cleanup an estimated 800 sites.

Mr. President, both the public and the Congress have a right to know of the existence of hazardous waste sites at Federal facilities, and plans for cleanup. This amendment will accomplish these goals, Mr. President, and belongs with the other reporting requirements in S. 51.

Mr. President, I urge the adoption of the amendment.

Mr. STAFFORD. Mr. President, we have examined the amendment offered by the able Senator from New Jersey [Mr. LAUTENBERG], a very valuable member of our committee. We believe it is a good amendment and urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 652) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 653

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 653.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 101, after line 12, insert the following new section and renumber succeeding sections accordingly:

LEAD CONTAMINATION

SEC. . Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended by this Act) is amended by adding at the end thereof the following new paragraph:

"(8) payment of the cost, not to exceed $15,000,000, of a pilot program for the removal of lead-contaminated soil in one to three different metropolitan areas.".

Mr. KENNEDY. Mr. President, one of our most serious toxic waste problems concerns the presence of lead in paint, dust and soil, particularly in our older urban areas. More is known about the health problems associated with lead exposure than almost any other toxic substance, yet little has been done to target lead contamination for aggressive cleanup action.

The most tragic aspect of lead contamination is that it affects the most innocent members of our society—our children. Young children frequently ingest lead from paint chips or lead-laden soil in their yards, and this leads to irreversible neurological damage, including seizures, coma, and death. Lead poisoning in children is extremely hard to diagnose in its early stages, since long-term exposure is cumulative over time. Therefore, toxicity is often not recognized until permanent damage has been done, and the child begins to exhibit cognitive and behavioral changes or learning disabilities.

In 1980, the Centers for Disease Control estimated that 675,000 children nationwide were suffering from lead poisoning. Recently, experts at Children's Hospital in Boston estimated that the number of affected children had grown to 2 million. In the city of Boston alone, over 1,500 children have been stricken with the tragic effects of lead poisoning—and most of these children are from low-income families who are ill-equipped to deal with the long term medical costs associated with treating lead-induced neurological disorders. The prevalence of childhood lead poisoning in Boston is higher than nearly any other childhood disorder.

And adjacent to the city of Boston lies the economically depressed city of Chelsea where there are similar accounts of childhood lead poisoning. The problem in Chelsea is further contributed to by soil contamination caused by automobile exhaust fumes and peeling paint from an interstate highway bridge which spans the city.

I am proud to say that the city of Boston has been on the cutting edge of conducting research into the lead poisoning problem. Between June 1984 and May 1985, over 25,000 children were screened for lead poisoning. Results of these tests were tabulated to pinpoint areas in the city where there was a high incidence of lead poisoning. The study concluded that nearly 30 percent of Boston's childhood lead poisoning occurs in 28 small areas of the city—averaging only 2 to 3 city blocks. Soil samples taken in the yards of these children's homes indicated lead levels of 2,000 parts per million—three times the citywide average.

In view of this startling information, I believe that the cities of Boston and Chelsea are ideal locations to begin a pilot lead abatement program under Superfund.

Mr. President, I understand that the Environmental Protection Agency is reluctant at this time to support a comprehensive national program of lead abatement under Superfund. However, I propose that a demonstration program of this kind, for one to three appropriate urban areas in the United States, would provide us with invaluable information which the EPA could utilize in its deliberation on an adoption of a lead policy under Superfund.

If medical experts' predictions are correct, we should see a dramatic and almost immediate reduction in the incidence of lead poisoning in areas where contaminated soil removal or containment has taken place.

My amendment would provide the EPA with $15 million to undertake such a pilot program. Boston and Chelsea would be eligible as would two other appropriate locations. I urge my colleagues to consider the importance of this amendment, not only for the environment, but more importantly, for the health of our children.

Mr. President, I ask unanimous consent that a brief description of the Boston Child Lead Poisoning Report by the city of Boston Department of Health and Hospitals be included in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

CITY OF BOSTON,
DEPARTMENT OF HEALTH AND HOSPITALS,
Boston, MA, September 5, 1985.

Hon. EDWARD M. KENNEDY,
U.S. Senator,
Boston, MA

DEAR SENATOR KENNEDY: Enclosed please find a copy of a report entitled "Boston Child Lead Poisoning: Request for Immediate Cleanup of Lead-Contaminated Soil in Emergency Areas". This report describes the results of several months of analysis and mapping of Boston child lead poisoning data in order to identify the highest risk areas in the city. We found that childhood lead poisoning in Boston, while occurring throughout much of the city, is to a surprising and alarming degree concentrated within very limited geographic areas.

The discovery that nearly 30% of Boston's childhood lead poisoning occurs among less than 5% of the city's 9 month to 6 year old children is the source of concern. These children live in 28 discrete areas, each averaging only 2-3 city blocks. In each of these small areas, an average of thirty children were found to have been poisoned over the last five years—approximately one out of every four children at risk. These data have been calculated using the 1978 recommendations of the U.S. Centers for Disease Control (CDC). By the standards in the current CDC guidelines issued in 1985, at least twice as many of the children in these areas experienced lead toxicity over the five year period.

In these areas, a number of factors converge to produce an unacceptable exposure to lead. The lead-painted housing stock is aging, and weathering of exterior lead paint has severely contaminated the soil. Soil samples taken around lead poisoned children's homes in these areas average 2000 parts per million (ppm) lead—three times the city average of 600-700 ppm. These toxic environments need to be addressed as an urgent matter. They represent an emergency public health condition requiring prompt action to reduce or eliminate the sources of these children's lead toxicity.

In this report the City of Boston Office of Environmental Affairs (OEA) requests the assistance of the U.S. Environmental Protection Agency in dealing with this major problem of child lead poisoning. The U.S. Environmental Protection Agency has statutory authority to undertake immediate removal of hazardous substances at sites that present an imminent threat to health on the environment. Materials in this document decribe the need, and the grounds for EPA assistance to the City of Boston under this authority. A specific, limited, and manageable focus for an EPA response is described. The necessity for both state and local involvement is noted.

Any response taken by a public agency must meet the primary criterion that child lead poisoning in these areas be permanently reduced. We hope that upon reviewing this document you will actively support us in this effort to obtain appropriate responses for government agencies, particularly the U.S. Environmental Protection Agency.

Thank you for your time and attention. Please call me at 424-5965 with any questions you may have.

Sincerely,

RONALD R. JONES,
Director.

Mr. KENNEDY. Mr. President, this is not an increase in authorization. All it does is to explicitly provide the authority for the EPA to use the fund to conduct pilot programs in three different areas of the country so that we may gain more information based upon those pilot programs and be able to respond to the health hazard of lead, which primarily harms children but also other members of the community.

I have had the opportunity to discuss this amendment with the floor manager and the ranking minority member. I would hope that this amendment would be accepted.

If I could, I would like to inquire of the floor manager of the bill if he would be willing to engage in a colloquy, responding to some questions.

Is my understanding correct that the EPA already has authority under the Superfund to remove lead-contaminated soil from residential yards?

Mr. STAFFORD. I would say to my able friend from Massachusetts that it is our judgment that the EPA has that authority and they are considering using it in some cases.

Mr. KENNEDY. Does it have such authority regardless of the source of lead, whether the source is industrial or not?

Mr. STAFFORD. Yes, just as long as the lead is a release under existing law.

Mr. KENNEDY. So this pilot program would in no way limit that authority; is that correct?

Mr. STAFFORD. That is correct, in the opinion of this Senator.

Mr. KENNEDY. If the floor manager and ranking member are willing to accept this amendment, would it be unreasonable for EPA to report back to the committee on the implementation of the pilot program, say within 6 months from enactment?

Mr. STAFFORD. I believe that is a reasonable request. I would say to my friend from Massachusetts that we would ask EPA to make that report.

Mr. President, we have examined the amendment offered by the Senator from Massachusetts. I might point out that the Senate has already, in this legislation, proposed to deal with lead in pipes by eliminating lead solder as it is used in construction in this country.

Mr. President, we know that lead is a serious matter as a source of poisoning for children and others in metropolitan areas.

We think this is a good amendment, and we are prepared to accept it on this side.

Mr. LAUTENBERG. Mr. President, we believe this is a good amendment also on this side. I commend my distinguished colleague from Massachusetts for crafting this amendment. We urge its adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 653) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 654

(Purpose: To provide for continuation of remedial action while recontracting takes place.)

Mr. KENNEDY. I have another amendment. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 654.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 60, line 7, insert "(a)" after "Sec. 108.".

On page 60, between lines 12 and 13, insert the following:

(b) Section 134(c) of such Act (as amended by sections 112 and 113 of this Act) is amended by adding at the end thereof the following new paragraph:

"(8) Nothing in this Act shall limit the President in taking such action as may be necessary to assure continuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding or otherwise recontract for the performance of remedial action.".

Mr. KENNEDY. Mr. President, this particular amendment relates to avoiding disruption of cleanup action when EPA recontracts for remedial services. There is nothing more frustrating or emotionally upsetting to those people who have had to live near a hazardous waste site than to be faced with interruptions in the cleanup process.

Such a situation has developed at the Re-solve toxic waste site in North Dartmouth, MA, where large quantities of industrial wastes and PCB's have contaminated the soil and poisoned the ground water.

For years, the people of North Dartmouth waited patiently for EPA to clean up this site—and, under the guidance of the U.S. Army Corps of Engineers, cleanup finally commenced earlier this year. However, in the middle of the cleanup process the EPA suddenly discovered vast new quantities of PCB contamination. This fact alone was devastating to the people who lived near this site, but their fear and frustration was further compounded by the fact that Federal regulations were construed to require significant modification of cleanup contracts under Superfund. Therefore, work has been halted at the site and the contract for removal of the toxics has been terminated. Cleanup work is not expected to commence until 1987.

As more and more sites are addressed under Superfund, EPA predicts that the North Dartmouth problem will be repeated with a fair amount of frequency.

My amendment would explicitly allow and encourage the EPA to be more flexible in choosing alternative cleanup procedures when additional contamination is discovered at Superfund sites. Rather than halting or slowing cleanup when restrictive bidding regulations warrant rebidding or recontracting for remedial action, the EPA could choose to utilize immediate removal moneys or undertake other forms of interim remedial action to avoid disruption during the lengthy process of rebidding a cleanup contract.

The people of North Dartmouth have exercised an extreme amount of patience in waiting for this cleanup and they deserve to have this site addressed as quickly as possible. It is not in the best interest of the public health or the environment to allow chemicals to continue to harm people, and to continue to migrate for another

2 years while this contract is rebid. I hope the Senate will support this important modification to the Superfund Program and I hope that this amendment might also be acceptable to the managers of the bill. It is basically to overcome some of the redtape that has been established through the process of regulations. I think it makes a good deal of common sense.

Mr. STAFFORD. Mr. President, we have had an opportunity to examine this amendment offered by the able and distinguished Senator from Massachusetts. We think it is appropriate and that its language is necessary to ensure, where there may be an interruption in the treatment of a hazardous waste site, that it be clearly possible and authorized to renew operations to make sure the job is completed. We on the majority side are prepared to accept the amendment.

Mr. LAUTENBERG. Mr. President, we on the minority side not only have no objection but, once again, commend the distinguished Senator from Massachusetts for taking this action. In New Jersey we had a similar experience where work was begun and was interrupted when a far larger source of contamination was discovered, and it ought not happen. These are extremely hazardous conditions for communities which exist around these sites. We urge adoption of this amendment.

The PRESIDING OFFICER. Are there further remarks? If not, the question is on agreeing to the amendment.

The amendment (No. 654) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 655

(Purpose: To increase funding for health studies.)

Mr. KENNEDY. Mr. President, I have one other amendment at this time. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], proposes an amendment numbered 655.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 83, line 12, strike out "$50,000,000, whichever is less" and insert in lieu thereof "$100,000,000, whichever is greater".

Mr. KENNEDY. Mr. President, during the past 5 years, since CERCLA was first enacted, we have become aware of many limitations in the law. But none of these limitations has affected Americans so deeply and so permanently than our inability to adequately identify, diagnose, and document incidences of chemically induced disease.

I have traveled to a number of communities in Massachusetts and across this Nation and I have met with residents who have had to live in the shadows of toxic waste dumps, not knowing from day to day if their health was being irreversibly harmed by chemicals which cause cancer, nervous system damage, miscarriages, stillbirths, birth defects, and many other illnesses.

Millions of Americans are being exposed to these dangers and yet we are still unable to provide the resources necessary to help these innocent victims protect their health and make informed decisions about their communities.

A stronger effort must be made by our health agencies to develop better screening tools to detect illness caused by toxic chemicals and to develop treatments. We must improve our epidemiologic capability to identify populations at risk and take corrective action.

These issues are important, not just because they involve the public health, but because they involve public trust and confidence in Government. The inability of Government at all levels to respond to frustrations, anxieties, and fears of communities whose people are exposed to dangerous waste further erodes public trust.

Without adequate epidemiological data, it will be impossible for victims to make claims against polluters in the courts. A case in point is the situation in Woburn, MA, where a high incidence of childhood leukemia has plagued the community for the past decade. In 1978, cancer-causing chemicals were found in a portion of the city's water supply. The citizens pleaded with health agencies to conduct a comprehensive epidemiological study of their community; however, the study, which was finally performed by the Centers for Disease Control, was entirely inadequate to provide conclusive results. The residents of Woburn were then forced to turn to the services of the Harvard School of Public Health which fortunately agreed to undertake a study free of charge. The results of that 2-year study were conclusive and indicated a direct association between the high incidence of leukemia in Woburn and the contamination of the city's drinking water.

Eight of the families whose children were stricken with leukemia will go to court on February 18 to sue the industries allegedly responsible for poisoning their drinking water. However, without the epidemiological data available through the Harvard School of Public Health Study, their case could never have reached the courts—innocent victims would have been left uncompensated and polluters would have been left unpunished. The Woburn suit is the first suit of its kind in the country and this is largely due to the fact that other Superfund communities have been unable to obtain the necessary health data to enable them to sue polluters.

In 1980, Congress required the establishment of the Agency for Toxic Substances and Disease Registry [ATSDR]. It was that Agency's responsibility to undertake and coordinate health-related activities under Superfund. However, during the past 5 years, only 15 comprehensive health studies have been undertaken by the ATSDR. The Agency is clearly underfunded and understaffed.

I am pleased to see that this bill will provide the ATSDR with additional resources, but more can and must be done. Health studies are extremely expensive and staff intensive. An ATSDR study which recently commenced to study the effects of PCB's on residents in New Bedford, MA, will cost nearly $1 million.

There are now 850 sites proposed for priority action under Superfund and if even a small portion of these sites require health studies, we will need to vastly increase funding for the ATSDR. Residents at many of the 21 Superfund sites in my home State are demanding that more be done to provide them with adequate information on their health and their exposure to hazardous substances.

My amendment proposes to double the size of the appropriation to the ATSDR for the next 5 years making available a minimum of $100 million for conducting health studies and hiring additional personnel.

Mr. President, this amendment raises the limits in the legislation from $50 million to $100 million but does not increase the total authorization.

We know that health studies are an essential aspect in the review of the hazards designated by EPA. It is my understanding now the Center for Disease Control would require about $30 million to conduct these health studies with the required and necessary personnel, which would only permit $20 million to be used for new studies. Therefore, this amendment would raise that figure of $50 million to $100 million to be available for health studies.

Health studies are one of the most essential and important components of the Superfund Program, and they are essential to achieve its legislative purpose. I hope that given the expected continued increase in terms of new sites over the period of this next year and given the essential nature of health studies by the Center for Disease Control, the authorization for these new studies will be increased. As I said, it does not increase the total authorization in any way, but it will make available as an appropriate use of the fund, if necessary, the resources needed to conduct an essential aspect of the EPA function.

I have had an opportunity to talk with the managers of the bill, and I hope this amendment might be favorably considered.

Mr. STAFFORD. Mr. President, I can support the Senator's suggestion that the $50 million figure be deleted, but for this side of the aisle I am very reluctant to accept the $100 million figure as a ceiling. I say to my friend from Massachusetts that we have planned to strike the $50 million, but we are hesitant to have a ceiling imposed of $100 million since it is quite possible that might not be enough either. It is our hope that the Senator would amend his proposed amendment simply to strike the $50 million ceiling that now exists.

Mr. KENNEDY. The Senator from

Vermont has made an excellent suggestion which certainly achieves the purposes of this amendment. I think his recommendation is a wise substitute for the approach I have suggested. So, Mr. President, I will modify the amendment to strike the $50 million figure.

The **PRESIDING OFFICER**. Will the Senator send the modification to the desk.

Mr. **STAFFORD**. Parliamentary inquiry, Mr. President. We understand the Senator from Massachusetts has modified his amendment by striking the $100 million?

Mr. **KENNEDY**. Mr. President, I send to the desk a modification.

The **PRESIDING OFFICER**. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 83, line 12, strike out "$50,000,000".

Mr. **STAFFORD**. Mr. President, with the modification of the amendment as we understand it, we are prepared on this side to support and accept it for the majority.

Mr. **LAUTENBERG**. A question, if I might, Mr. President, to be sure we all understand the language of the amendment. Can the clerk read the amendment?

The **PRESIDING OFFICER**. The clerk will report.

The bill clerk read as follows:

"On page 83, line 12, strike out $50 million.

Mr. **LAUTENBERG**. I thank the Chair.

Mr. **KENNEDY**. As I understand the effect of the amendment then, Mr. President, as the floor manager has described, actually the amounts that could be expended in terms of the health studies may very well exceed the $100 million.

Therefore, I think the amendment is necessary. I welcome the support of the floor managers and hope it will be accepted by the Senate.

Mr. **LAUTENBERG**. Mr. President, I wish to add a point of clarification from my standpoint in terms of what is intended in this amendment. I fully support the concept of striking the $50 million cap because I share the view of the chairman of the Committee on Environment and Public Works as well as that of my distinguished colleague from Massachusetts that we want to get this job done and we want to be sure, as we review the health risks, that we are not limiting expenditures because of shortsighted funding ceiling.

I fully support this amendment. As I understand it, it is the funding that is directed to the Agency of Toxic Substance and Disease Registry.

Mr. **KENNEDY**. The Senator is quite correct. They have the responsibility and are the source of information and personnel. I am very hopeful that with this kind of action by the Senate, they will be encouraged to conduct the kind of studies which are absolutely essential in both the existing designated sites and the future sites. This fund will be very, very important. I think the record that has been made by the Senate and the floor managers will encourage more health studies. That is an absolutely essential element in terms of this whole legislation.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment as modified.

The amendment (No. 655), as modified, was agreed to.

Mr. **KENNEDY**. I move to reconsider the vote by which the amendment was agreed to.

Mr. **STAFFORD**. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

Mr. **KENNEDY**. Mr. President, I express my appreciation again to my good friend, the chairman of the committee, Mr. STAFFORD, and the floor manager for the minority, Mr. LAUTENBERG, for their willingness to accept these amendments. I thank them for the very excellent work they have done in bringing this legislation to the floor. It is a matter of enormous importance to the people of my State and very important to people all over this country. I commend them both for the work they have done and I look forward to working with them in the future on matters in this area.

AMENDMENT NO. 655 (MODIFIED FURTHER)

Mr. **STAFFORD**. Mr. President, it has become necessary for the Senator from Vermont to ask unanimous consent of the Senate to make a technical modification on page 83, line 12. The necessity for doing this is an amendment we recently adopted, offered by

Senator KENNEDY, No. 655, which has been modified. We find that in the process, we inadvertently did something we did not intend to do.

So I ask unanimous consent that a technical amendment may be agreed to on line 12, page 83, of the pending bill, by striking out the words "or $50,000,000, whichever is less," which appear after the word "Fund".

The PRESIDING OFFICER. Is there objection?

Mr. LAUTENBERG. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the further modification follows:

On page 83, line 12, strike out "or $50,000,000, whichever is less".

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I express my appreciation to the staff who caught that error.

AMENDMENT NO. 656

Mr. STAFFORD. Mr. President, on behalf of Senator HATCH, I send an amendment to the desk and ask that it be stated and for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for Mr. HATCH, proposes an amendment numbered 656.

On page 118, after line 8, insert the following new section and renumber succeeding sections accordingly:

HAZARDOUS SUBSTANCE RESEARCH AND TRAINING

SEC. . (a) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new section:

"HAZARDOUS SUBSTANCE RESEARCH AND TRAINING

"SEC. . (a) AUTHORITIES.—The Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency may each, consistent with their respective missions, support the following health-related activities through grants, cooperative agreements, and contracts—

"(1) Research (including epidemiologic and ecologic studies) in

"(A) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances;

"(B) Methods to assess the risks to human health presented by hazardous substances, including workplace hazard assessment;

"(C) Methods and technologies to detect hazardous substances in the environment and methods and technologies to reduce the amount and toxicity of hazardous substances, including recycling, incineration, biodegradation, chemical inactivation, and encapsulation; and

"(D) Improved health and safety practices in, and equipment for the handling and disposal of hazardous substances.

"(2) Training, including—

"(A) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities; and

"(B) Graduate training in environmental and occupational health and in the public health aspects of hazardous waste control.

"(b) AWARDS.—A grant, cooperative agreement, or contract may be made or entered into under this section by the Administrator of the Environmental Protection Agency or the Secretary of Health and Human Services (through the National Institute of Environmental Health Sciences or other appropriate agency or, in the case of training, through the National Institute for Occupational Safety and Health or other appropriate agency), with an accredited institution of higher education, a research institution, a State or local health agency, or other entity as the Secretary or the Administrator deems appropriate. Awards under this subsection shall be subject to peer review in a manner substantially similar to that of section 475 of the Public Health Service Act.

"(c) ADVISORY COUNCIL.—To assist in the implementation of this section, the Secretary and the Administrator may each, or they may jointly, appoint an advisory council. Such council(s) shall be representative of the relevant Federal government agencies, the chemical industry, the toxic waste management industry, institutions of higher education, State and local health and environmental agencies, and the general public.

"(d) PLANNING.—Within one year after the enactment of the Superfund Improvement Act of 1985, the Secretary and the Administrator shall complete a joint plan for the implementation of this section and shall report to the Congress on the plan and the implementation. The head of the Agency for Toxic Substances and Disease Registry shall coordinate the plan, which shall be drawn up with the participation of the Directors of the National Institute of Environmental Health Sciences and the National Institute for Occupational Safety and Health, and other officials as the Secretary and the Administrator deem appropriate.".

"(b) Section 111(c) of the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraph:

"( ) the costs of carrying out the research and training program under section , to the extent that such costs do not exceed $5,000,000 for fiscal year 1986; $10,000,000 for fiscal year 1987; $20,000,000 for fiscal year 1988; $35,000,000 for fiscal year 1989; and $40,000,000 for fiscal year 1990;".

Mr. STAFFORD. Mr. President, this amendment authorizes the awarding of grants, contracts, and cooperative agreements by the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, for health research and training related to hazardous waste cleanup.

Superfund strategy, the report recently issued by the Office of Technology Assessment, clearly identified the need to expand our current research and training activities related to health problems associated with the cleanup of hazardous waste sites and to the development and improvement of methods of evaluating health hazards and risk.

This amendment is designed to meet that need through providing research and training authority to both EPA and HHS. Together, these two organizations have the broad range of expertise necessary to plan and implement the variety of activities that are needed to strengthen current research efforts and to increase, through graduate training and through continuing education, the cadre of appropriately trained personnel. The Secretary and the Administrator are authorized to make awards to accredited institutions of higher education, research institutions, State and local government health departments, and other appropriate recipients. In particular, this authority will allow universities and other institutions with recognized expertise, at centers for environmental and occupational health, to develop and expand much needed training and research activities.

The amendment authorizes the Secretary of HHS and the Administrator of the EPA to appoint advisers, if necessary, to assist them in developing an implementation plan. It does not require the appointment of such advisory bodies. EPA and HHS would be required to submit a plan to Congress, and to report to us on how they are implementing these provisions. Working together to develop this plan and report will increase and enhance the growing cooperation between HHS and EPA in Superfund-related activities.

The language of the amendment acknowledges the important health-related research and training expertise that reside within the National Institute of Environmental Health Sciences and the National Institute for Occupational Safety and Health, but in no way does the amendment imply that these two institutes are or should be the only sources of awards.

A modest amount of money from the Superfund trust fund is authorized for this health related research and training: not to exceed $5 million for fiscal year 1986 and $10 million; $20 million; $35 million; and $40 million for fiscal year 1987-90.

Mr. President, we on this side of the aisle, having offered the amendment for Senator HATCH, are prepared to accept it.

Mr. LAUTENBERG. Mr. President, there is no objection on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 656) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 657

Mr. STAFFORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD] for himself and Mr. BENTSEN, proposes an amendment numbered 657.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 112, line 18, strike "agreement is entered into" and insert in lieu thereof "completion of remedial design".

On page 112, line 22, strike "construction design" and insert in lieu thereof "a remedial action plan".

On page 113, beginning on line 8, strike "a request for funding adequate to complete remedial action, and" on line 12, strike "request" and insert in lieu thereof "budget submission".

On page 114, after line 13, insert the following:

"(d) ACTION BY OTHER PARTIES.—If the Administrator in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that a remedial investigation and feasibility study or remedial action will be done properly at the federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of subsection (c), the Administrator may enter into an agreement with such party providing for assumption of the responsibilities set forth in those paragraphs. Following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.".

On page 114, line 14, strike "(d)" and insert in lieu thereof "(e)" and on line 21, strike "(e)" and insert in lieu thereof "(f)".

On page 114, line 22, and page 115, line 11, strike "procedures".

On page 115, after line 13, insert the following:

"(h) FEDERAL AGENCY SETTLEMENTS.—The head of each department, agency, or instrumentality or his designee may consider, compromise, and settle any claim or demand under this Act arising out of activities of his agency, in accordance with regulations prescribed by the Attorney General. Any award, compromise, or settlement in excess of $25,000 shall be made only with the prior written approval of the Attorney General or his designee. Any such award, compromise, or settlement shall be paid by the agency concerned out of appropriations available to that agency.".

On page 115, line 13, after the first period, insert "The President may exempt any site or facility of any department, agency, or instrumentality in the executive branch from compliance with any such guidelines, rules, regulations or criteria if the President determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with the reason for granting each such exemption.".

Mr. STAFFORD. Mr. President, let me say at once that this amendment I am offering for Senator BENTSEN and myself is purely technical in nature and makes no substantive changes in the legislation. The technical changes that are being recommended and contained in this amendment have been asked for by the Departments of Defense, Energy, and Justice, and the Environmental Protection Agency. These changes, I believe, are acceptable to all. For the majority, I am prepared to accept them.

Mr. LAUTENBERG. Mr. President, the minority has no objection and supports the amendment.

The PRESIDING OFFICER (Mr. CHAFEE). The question is on agreeing to the amendment.

The amendment (No. 657) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 658

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes amendment No. 658.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 101, after line 12, insert the following new section and renumber succeeding sections accordingly:

TECHNICAL ASSISTANCE GRANTS

SEC. . Section 111(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding the following new paragraph:

"( ) subject to such amounts as are provided in appropriation Acts, the costs of a program of technical assistance grants, in accordance with rules promulgated by the President, to community organizations or groups of individuals potentially affected by a release of threatened release at any facility listed on the National Priorities List, not to exceed $75,000 per facility. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.".

Mr. METZENBAUM. Mr. President, the amendment that I offer would provide grants to communities so that the residents of those communities could hire independent experts to help them deal with the complexities of hazardous waste cleanups.

This amendment makes sense. People who live near hazardous waste sites are frightened and concerned. Potentially dangerous chemicals and wastes are buried near their homes, schools, and parks.

Is it any wonder that people want to know about these toxic "soups" which practically sit in their own backyards? Is it any wonder that they want information on the health threats the sites may pose or details about the best ways to clean them up?

No. Local residents should be informed. They must be informed.

But, Mr. President, these same people often lack the expertise and experience needed to analyze the complex environmental, public health and technological issues associated with these superfund sites. And, making matters worse, they often lack the financial resources to hire the right "experts" who could help them.

As a result, the people who have the most to lose if cleanups are done improperly, are the very ones being shut out of the cleanup process. This can only breed more suspicion and more fear, and jeopardize the chance for a safe and effective cleanup.

My amendment would help communities get over this "lack of information" hurdle and help instill more confidence in the Superfund Program.

It would give EPA discretionary authority to provide grants to communities so that residents could secure the toxicologists, engineers, epidemiologists, geohydrologists or other "experts" who could help them interpret complex scientific data and make realistic decisions during the entire cleanup process.

My amendment is very reasonable. EPA would only provide a single grant to a particular community and that grant would be capped at $75,000.

Mr. President, this would provide a means for them to obtain experts in order to hlep them in connection with these issues.

I urge the adoption of the amendment.

Mr. President, it is my understanding the amendment has been cleared with the managers of the bill on both sides.

Mr. STAFFORD. Mr. President, we have examined the amendment of the Senator from Ohio [Mr. METZENBAUM] and we think it is a good amendment. We are prepared to accept it on this side.

Mr. LAUTENBERG. Mr. President, on this side of the aisle as well we think it is a good amendment. We fully support the proposal by the Senator from Ohio and ask for its consideration.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 658) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, I ask the manager of the bill if he would have any objection to my addressing myself for a few minutes on the subject of the bill, or does he want to proceed forward in connection with some other matter at this moment? I could await his preference.

Mr. STAFFORD. Does the able Senator wish to make a speech for 2 or 3 minutes? If so, we certainly will not object to that.

Mr. METZENBAUM. I intend to make a speech, a rather brief one, as a matter of fact.

Mr. **STAFFORD.** We have no objection if the Senator wishes to proceed.

Mr. **METZENBAUM.** I thank Senators on both sides.

Mr. President, I wholeheartedly support the reauthorization of the Superfund Program.

I think it is critical for Congress to move swiftly to enact legislation that will permit us to continue to clean up the thousands of hazardous waste sites that are located throughout the Nation. The health and well-being of thousands of Americans depends upon it.

Having said that I intend to vote for the bill, I want to indicate my concern about one aspect of the bill that is very disturbing to me, and that is the value-added tax. The value-added tax is a new concept. I am afraid that once you open the door to this means of raising money there will be no end to the effort to use the so-called VAT, value-added tax, in a host of other areas as well.

The value-added tax is a very unfair tax. It is a very regressive tax. It hits those least able to pay.

I do not find fault with the fact that those who are handling this bill saw fit to include it in this legislation because they were looking for some way, some means in order to find the necessary funds to do the job that has to be done as far as cleaning up waste in this country and the waste sites.

But I believe it is a dangerous precedent. I am certain that once having broken down the barriers to a value-added tax we are going to hear more and more on this subject in the future. What the value-added tax does is it provides for an addition onto the price at every step in the sales process whether it is an imported product, a produced product, a product sold at the wholesale level or the retail level. At each step you add on this value-added tax. Who winds up paying the value-added tax? The American consumer obviously.

I think it is the wrong way to go. I do not think it is a procedure that should be used. I think it is a very high price that we are being called upon to pay in order to pass this legislation. I wish that there were an alternative and if there were an alternative I would very seriously consider it.

I will not vote against the bill because it is included in it because I feel so strongly that we need the basic legislation. But, having said, that, I wish that there were another alternative. I hope that others will not use the fact that the value-added tax is included in the Superfund bill to return time and time again to the floor of this Senate in order to propose raising funds in that manner. I think it is a bad procedure, a bad precedent, and one that I find myself having difficulty in swallowing and accepting, but I see no alternative at this moment.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. **SYMMS.** Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

AMENDMENT NO. 637

(Purpose: To terminate taxes allocated to the Superfund at such time as $5,700 million has been credited to the Superfund and to limit the amount which may be expended from the Superfund during any fiscal year)

Mr. **SYMMS.** Mr. President, I have an amendment that I am going to call up in a moment which will be offered on behalf of the distinguished senior Senator from North Carolina and myself. But I want to make a couple of general comments about the situation we are in before I get to the amendment. This will only take a moment or two.

As a general philosophical position, Mr. President, I support cleaning up hazardous waste sites, but I believe we have gone way too far with the excessive amount of money we are putting into S. 51. It is simply making too much money available under the current circumstances. This is the time, and we talk about it constantly, that we ought to hold the line on spending. It does not seem to me that it makes a lot of sense to make more money available for EPA than they think they can actually use. EPA experts testified before the Public Works Committee that they could not use more than $1 billion a year. That is all they should have.

I am going to propose an amendment in a few moments which would fix a more modest spending level, which would provide less money overall, but would allow for the funding level to get up to the point that the distinguished chairman of the committee, Senator STAFFORD, has put into the bill. It would get up to that by the end of the program.

I think before we really talk about the funding and the amendment, it would be wise to review the record. The American people should be acutely aware of the fact that implementing the Superfund legislation, which I grant is a very noble cause—to clean up poisonous, hazardous, toxic wastes—it has cost $1.6 billion so far to clean up six sites. No one in America is against cleaning up hazardous sites—no one likes having toxic waste dumps running a risk to human life. By attempting to bury our waste problems under a blizzard of deficit dollars it seems to me as if we are guaranteeing waste, we are guaranteeing inefficiency. We are causing all kinds of problems.

We have seen people sent to jail as a result of this so there have obviously been some problems with respect to it.

It is a Superfund. It is a classic opportunity for pork barreling and overfunding, overfunding providing more opportunity for pork barreling.

I do not think we really know yet what the scope of the Superfund problem is going to be. EPA estimates 22,000 sites. GAO estimates 300,000 sites.

If you fund this for $1.5 billion a year there will probably be 600,000 sites and if we can get it up to 3 billion there will probably be 6 million.

For all I know, toxic waste sites will start coming out of the woodwork if somebody thinks there is a way they can get their hands on the money. They are going to want to spend it in their country, their State, or their local municipality or whatever, even though most of it will be going to pay lawyers. Unfortunately, most of it will be going to pay lawyers in this town. If it went to the law firms out in the States, that would not be so bad, but that is not what is happening, unfortunately.

I am not convinced that we have a funding mechanism more fair than the current one. I do not know if we have really answered that question yet. But here we are, ready to legislate on it.

The current feedstock tax would eventually drive a significant share of our chemical refining and manufacturing capacity offshore, so I do not want to raise that much. We do not want to drive anybody offshore by having an excessive tax that would hurt an industry that has to compete internationally.

The new financing scheme also leaves a little to be desired. They provide the off-budget schemes for taxes that, if the experience of other countries is any indication, became wealth-consuming monsters. I think we all know in this Chamber that much of the reason that Europe has become so socialized is the value-added tax which has provided a mechanism, a hidden tax, so politicians could go out and buy votes with taxes people do not realize they are paying.

Even having said that, I do not think we have a good choice here before Congress. I think there is a possibility that this tax we have in here may be better than the older one because of the threat of driving jobs offshore. We need a broad-based viewpoint on this. So I am being critical in what I am saying about the methodology of the taxation here necessarily. However, I think we have to recognize that it is putting the nose of the camel under the door of the tent and it is hard to tell where it might end up.

Another major problem with Superfund is the liability problem. Strict joint and several liability simply is not working. What is happening is, as I have already mentioned, that transaction costs actually exceed the cost of the cleanup work. For some of my colleagues who might wonder what transaction costs are, that is when you have to pay people to litigate to decide who is liable for the actual cleanup. We had example after example before our committee and I shall give one of the worst examples, but there were several that were similar.

In the Conservation Chemical case, pretrial attorneys' fees have been estimated at $5 million to $11 million and the actual cleanup costs at $6 million. Just think about that, Mr. President. They spend $5 million, at least by some estimates, and up to $11 million by others to pay lawyers to litigate to try to decide who is liable and the actual cleanup cost is $6 million. That really bothers me, the idea that our Government collects for the cost of hazardous waste cleanups solely on the basis of availability without regard to who actually contributed.

On the other side of the coin, if you want to try to make it fair and put all the burden of cost just on the companies who might be producing most of it, I think we would find we would run all of them offshore because the profits do not even equal what some people are proposing we spend on it. In my own State of Idaho today, the specter of liability for environmental problems caused a long time ago is hampering negotiations to reopen at least one mine that would produce an important strategic mineral. If we could somehow get this bill worked out so the new owners of the mine could be responsible for any liability or any environmental damage they cause from here into the future, they are willing to go in and invest several million dollars, in the neighborhood of $100 million or maybe slightly less than that, to reopen a mine to produce a critical mineral that is essential to the security of the United States of America.

Unfortunately, they feel they cannot make the investments if they have to take the liability of what has happened in the past on that same property. I think those are the kinds of questions we ought to answer.

Whether the Senate will go along with amendments that may be entertained by myself and other Senators later through the debate, I do not know, but I do think it makes the case for the amendment that I am about to propose. I have been urged by some to introduce an amendment to Superfund that would release a new purchaser from the liability for hazardous wastes created by the predecessor. That seems to me to be only fair, a simple straightforward amendment, but I have been told by all the attorneys on the staff that that is unthinkable, it will not pass because it would create too many sheltered corporations and so forth. I can see some problem with it.

But I just throw that out as an example of questions that have not been answered and here we go again, Mr. President, we are ready to go in and throw a billion-and-a-half dollars at a problem every year so we can go back home and say we are cleaning up toxic wastes when, in fact, we could be spending that money to support a lot more paperwork, a lot more court costs, before we actually settle something to pay the men and women who actually go out and does the physical work to clean it up.

The insurance industry testified that they see the cost of liability for cleanup as greater than industry assets. What kind of situation is that? Are we actually setting up a situation here where the liabilities that the insurance companies see with respect to toxic waste cleanups and Superfund problems will be more than the total assets of an insurance company? If so, they simply will not insure the responsible contractors. They are simply not going to do it. So a responsible contractor is going to say, "I am not going to put my company at risk, even though we have a capability to do Superfund cleanup, without adequate insurance."

It seems to me that the Superfund cleanup is going to be stalled until the insurance issue is resolved. I am saying, Mr. President, why, then, should we have $1½ billion thrown at a problem when the Agency itself says they cannot properly spend more than $1 billion a year?

The provision for victims' compensation is another open-ended invitation for litigation. While the present law provides wonderful opportunities for litigation and waste, it really does not provide much incentive for effective cleanup of our hazardous waste sites.

Mr. President, I simply think what we ought to call this, instead of Superfund a lawyers' slush fund. That is what it really is. The lawyers are waiting at the doors for Congress to shovel the money out so they can start suing everybody.

We have one site in Idaho, at Kellogg, where they are proposing to spend $50 million and one person said they are going to sue them all the way back to whoever mined or wasted material up there, clear back to 1880. There are not many people in Silver Valley living now who remember what went on in 1880, but that is not going to stop the attorneys from going back and suing.

Mr. President, I see my distinguished colleague, the Senator from North Carolina [Mr. HELMS] on the floor and I call up the amendment by myself and Mr. HELMS which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] for himself [illegible] Mr. HELMS proposes an amendment numbered 637.

Mr. SYMMS. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 124, line 16, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 125, line 20, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 126, line 10, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 126, line 13, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 126, line 18, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 136, line 21, strike out "$7,500,000,000" and insert in lieu thereof "$5,700,000,000".

On page 155, between lines 14 and 15, insert the following:

"(3) LIMITATION ON AMOUNTS EXPENDED DURING ANY FISCAL YEAR.—The amounts expended from the Superfund shall not exceed—

"(A) $600,000,000 during fiscal year 1986,

"(B) $900,000,000 during fiscal year 1987,

"(C) $1,200,000,000 during fiscal year 1988,

"(D) $1,500,000,000 during fiscal year 1989, and

"(E) $1,500,000,000 during fiscal year 1990.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SYMMS. Mr. President, the amendment I am introducing is not really the amendment I would like to introduce. What I would like to do is extend Superfund in its current form for another 3 or 4 years and continue the work that the chairman of our committee has started and try to answer some of the questions that I just brought up in the remarks that I just made. This amendment I offer, I think, is practical. It is a compromise, from my point of view. I am very pleased that my distinguished colleague [Mr. HELMS] is cosponsoring it.

I am sure most Members of the Senate would want to see hazardous waste sites cleaned up as practically and as rapidly as possible. As I mentioned, we have Superfund sites in Idaho and we are as concerned as anyone else and would like to see that they are cleaned up. At the same time, I think we want the cleanup done properly.

In fact, in my view, Mr. President, it is imperative that the best possible cleanup job be done, but I do not think we should be risking remedial actions that even by the remotest chance might result in more serious hazards at some time in the future. In my view, it would be a very serious mistake if the problem were increased because some cleanup measures were poorly thought out or improperly executed. I am making the case for proceeding on Superfund at a more moderate pace.

It will produce, in my view, the best results in the long run. This does not simply mean covering our hazardous waste sites with Federal funds. What we need to do, instead of authorizing $7½ billion, which is what this bill calls for over the next 5 years, is treat it like a small child. You teach a child how to crawl, then you teach a child how to walk, then the child can start running and, who knows, maybe someday the child can run for the U.S. Senate or some other office, but they cannot do it while they are still in the crib. That is all I am saying. We have the horse ahead of the cart.

Now, given the magnitude of the task, I think it would be a very reasonable approach. The Environmental Protection Agency—and I repeat this again from my colleagues who may not have heard me say it—testified that they cannot utilize efficiently more than $1 billion per year. It seems to me that we have had enough bitter experience to be extremely wary about funding a program at a level higher than at which the managing agency feels comfortable. We all know the available money will be spent. We are not sure how well it will be spent. They will spend the money all right, but will they spend it the way it has been spent? We've spent $1.6 billion to clean up six Superfund sites? Fifty percent of the money, I say again, has been going for transaction costs.

What this amendment does is very simple. This is what you call the crawl-walk-run amendment, Mr. President. The first thing you do, instead of spending $1.5 billion next year, looking at fiscal year 1985 we are going to spend approximately $300 million in

Superfund. For fiscal year 1986 my amendment proposes we spend $600 million; for fiscal year 1987 we propose that we will spend $900 million; for fiscal year 1988 we will spend $1.2 billion, and for fiscal year 1989 we will be at the point where the chairman wants to put us next year, $1.5 billion, and then they will spend another $1.5 billion in 1990.

This is a very modest reduction in the amount. It will give those people who administer the Superfund the opportunity to address some of these excessive litigation and transaction costs and we can work our way into this. If we solve some of these problems, by the time we get to the end of the 5-year period, in my view we will be much further down the road toward actual cleanup of Superfund sites than we will if we spend $1½ billion next year and end up in massive lawsuits and litigation. We hope we do not have any problems again where there will be accusations of corruption, and so forth, but when you start throwing that kind of money at a problem, Lord only knows where it can end.

Now, the total then ends up at $5.7 billion. I think any Senators who are concerned about the dedication they have for cleanup of toxic waste dumps can very comfortably go back home, Mr. President, and tell their constituents that they have voted for a new program of Superfund that calls for spending $5.7 billion over the next 5-year period. $5.7 billion would run the State of Idaho for a long, long time. We spend about $570 million a year to run the whole State government. And so I think $5.7 billion is a very generous amount of money for the taxpayers of this country to be expected to pay, considering all the bugs in this program.

After all, the Federal Government does not have any money. We have a $200 billion deficit. So any money that they spend on this they have to take away from somebody else. This is the problem that I see with the $200 billion deficit we are operating under today. The budget resolution which passed the Senate this year calls for spending $175 billion, Mr. President. $175 billion is being spent just for interest on the debt. That amounts to about $750 per person, or meaning that 50 percent of all of the tax receipts that go to the Federal Treasury are now spent on interest.

I realize this is a self-funding program; it carries a tax with it, but a tax is a tax. One way or another it has to be paid. We should recognize that we do not have the kind of money this bill calls for, and I am proposing that we trim out about $2.8 billion.

Remember also that the Superfund legislation authorization for the last 6 years was $1.6 billion, or $320 million a year. And I am not yet persuaded that is not enough until we work out the bugs. I am offering a modest proposal. I think it is a responsible proposal. It would double the amount of money we spend next year over what we spent this year, it would triple it the next year, it would go to $1.2 billion in the fourth year and $1.5 billion the fifth year. It goes $600 million, $900 million, $1.2 billion, $1.5 billion, and $1.5 billion.

Mr. President, it is very easy to understand. I urge my colleagues to support the amendment. We will still have plenty of problems to solve with this legislation, but this will at least get it back down to some kind of responsible size.

I thank the indulgence of my colleagues. I urge support of the amendment, and I yield the floor.

Mr. HELMS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the amendment offered by the Senator from Idaho.

Mr. HELMS. To what piece of legislation?

The PRESIDING OFFICER. To S. 51.

Mr. HELMS. The title of which is what?

The PRESIDING OFFICER. The title of which the clerk will report.

The legislative clerk read as follows:

A bill to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

Mr. HELMS. I thank the Chair and I thank the clerk. After studying the bill, I concluded that it must be the Lawyers' Relief Act of 1985, but apparently it bears another title.

The Senator from Idaho is exactly right, Mr. President. People who are going to benefit most from this legislation will be thousands of lawyers who will be on the opposing sides in a plethora of lawsuits. But in any case, with all due respect to the distinguished manager of the bill, who is a dear friend, I must oppose the bill. And I certainly support the amendment of the able Senator from Idaho [Mr. SYMMS]. As a matter of fact, I say to the Senator from Idaho, I had prepared an amendment to reduce the funding even more than he proposes, down to $5,300,000,000.

Mr. SYMMS. I say to the Senator that I welcome the amendment. If he would like to offer it as an amendment to my amendment, I would support it. I would like to have it $300 million a year, as we talked about earlier.

Mr. HELMS. I thank the distinguished Senator. Well, the Administrator of the EPA says his agency simply cannot possibly spend wisely the billions of dollars that is going to be thrown to EPA through this legislation. That is the point. It is not a matter of who is in favor of cleaning up toxic waste. All of us are. All of us are in favor of motherhood, and, presumably, against sin.

But in any case, Mr. President, more and more people who have taken the time to examine this legislation, and the so-called Superfund, are wondering if it would not be more aptly described as "Superbust." Let us look at the record. It speaks eloquently.

Superfund was given an appropriation 5 years ago of $1.6 billion. I raised a lot of questions then, I say to the able Senator from Idaho. As a matter of fact, we negotiated a smaller amount than was previously proposed in 1981. I hope, fervently, that we can do so again. That is the goal of the distinguished Senator from Idaho, and it is certainly my goal as well.

Back to 1981 and events since that time. Five years later and $1.6 billion later, what has been accomplished? Precisely six hazardous waste sites out of thousands across the country have been cleaned up. Just six, Mr. President. That averages out to be in the neighborhood of $266 million per site, which is a pretty expensive neighborhood. Where has all that money gone?

Mr. SYMMS. Mr. President, will the Senator say that again? How much per site?

Mr. HELMS. $266 million per site, I would say to my friend.

Mr. SYMMS. $266 million?

Mr. HELMS. That is correct. That is what the spending per project averages out to be.

Mr. SYMMS. Mr. President, will the Senator yield for a question?

Mr. HELMS. I yield, of course, to my able colleague.

Mr. SYMMS. I have already had local county commissioners, chamber of commerce people, and other people in my State come to me and say, "Let's try to get some of this Superfund money spent in our county."

I said: "Have you got a Superfund site?"

They said: "No, but we're going to find one, because we're pretty sure that out at the county dump, back in the late 1940's, people were dumping stuff that we have reason to believe was toxic, and we're going to try to get it qualified."

From reading the regulations, we are going to have Superfund sites all over America. They are going to grow in North Carolina, Idaho, in the Dakotas. It is going to attract all kinds of people.

We talk about producing things. This will produce toxic waste dumps, if we get enough money in the program so that somebody thinks they can get it. If nothing else, the local bar association will find a toxic waste site so that they can have a lawsuit.

The Senator mentioned $266 million. In Sunny Slope, that is a lot of money. We might even have a site there.

Mr. HELMS. And what the Senator is experiencing is the predictable consequence of trying to solve problems by throwing excessive amounts of the taxpayers' money at the problems.

The point is—and the Senator is aware of this—most of the money expended for Superfund has not been spent on cleaning up hazardous waste sites. Far from it. More than $117 million, for example, has been spent on litigation costs alone. Paying the lawyers, who just love legislation like this.

So the Superfund, as I said earlier, might well be regarded as a lawyers' relief fund, not really as a mechanism to do very much to protect the public health.

That why I am cosponsoring the pending amendment offered by Senator SYMMS to save the taxpayers $1.8 billion by reducing the Superfund reauthorization fund $7.5 billion to $5.7 billion. I predicate my cosponsorship of this amendment on the fact that officials of the Environmental Protection Agency, themselves, have repeatedly stated that the Agency simply cannot spend $7.5 billion in an effective and prudent manner.

So what is afoot, here? If an agency assigned to administering the expenditures of funds says to Congress, "We cannot spend this much money wisely," what is the sense in forcing upon them more money than they can spend wisely?

In a March 15, 1984, hearing on Superfund, Mr. Lee M. Thomas, who was then the Assistant Administrator—he is now the EPA Administrator—warned, "Additional infusions"—of funding beyond EPA's capabilities—"could have a paradoxical effect on retarding our activities, not speeding them up." He added that "too great a rate has the potential for promoting fiscal waste."

If ever a soul in the bureaucracy stated a fact clearly, Mr. Thomas did on that occasion.

Then we move up to July 18 of this year. EPA Director Thomas—he had by then taken over as Administrator—reiterated his position, and he pointed to a number of important considerations: First, he said, the technical/legal restraints at EPA hinder EPA's ability effectively to manage a program greater than $5.3 billion. That is the reason why my original amendment specified reducing the funding for Superfund to $5.3 billion. According to Mr. Thomas, there is currently inadequate capacity to properly treat, store, or dispose of hazardous wastes. There are presently few facilities which meet the technical standards established under the Resources Conservation and Recovery Act [RCRA]. In addition, he says that land disposal restrictions established under the 1984 RCRA amendments limit options available for disposing of hazardous wastes.

Second, Mr. Thomas stated that although there are a number of developing technologies for the permanent treatment and/or destruction of hazardous wastes, the commercial availability of these technologies is quite limited. This lack of sufficient commercially available technologies could limit the extent to which the pace of the program could be increased.

Third, Mr. Thomas stated that EPA just does not have the staff, space, equipment, or administrative support to handle a $7.5 billion Superfund Program.

Mr. President, despite this warning from EPA and Superfund's failure to clean up hazardous waste sites, there are those who would turn a deaf ear to reality. Instead, they have embraced the theory that throwing more money at the project, almost $6 billion more than currently authorized, will make everything better, that somehow more money will make more cleanup.

I find myself wondering if we are not on a slippery slope of throwing money at a problem when the money would simply be wasted.

Mr. President, the folks back home hear a lot of rhetoric about reducing the deficit and reducing Government spending. If Senators are really serious about getting Government spending under control, we should not reauthorize Superfund at more than $5.7 billion. We should save the $1.8.

The line is drawn. The choice is clear. We can either be fiscally responsible and have the courage to say no to Government overspending and do what is right for the American people, or we can bow to pressure interest groups.

I commend Senator SYMMS for offering this amendment to reduce the reauthorization level of Superfund from $7.5 billion to $5.7 billion and I urge my colleagues to support him by cosponsoring this measure.

Mr. President, I ask unanimous consent that the July 18, 1985, letter from Lee Thomas, Administrator of the EPA, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. ENVIRONMENTAL
PROTECTION AGENCY,
Washington, DC, July 18, 1985.

Hon. JESSE A HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: As you know, in February 1985, the Reagan Administration announced a proposal for amending and reauthorizing the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund). Contained in that proposal is an amendment which would increase the size of the Hazardous Substance Response Trust Fund (Fund), which finances the Superfund program, from the current $1.6 billion to $5.3 billion over the next five years.

The Administration believes that a $5.3 billion Fund is the maximum amount the Environmental Protection Agency (EPA) could effectively manage during the next five year reauthorization period. The Administration believes a $5.3 billion Fund, combined with a strong enforcement program which is expected to yield over $2 billion worth of private party cleanup through 1990, would enable EPA to effectively address the hazardous substance release problem over the next five years.

As you know, Congress is currently considering two major bills to amend CERCLA. These bills, S. 51 and H.R. 2817, would increase the size of the Fund to $7.5 billion and $10 billion, respectively. The Administration believes there would be seirous problems in managing a program of that magnitude and would support any effort to reduce those levels of authorization to $5.3 billion.

The Administration believes there are significant constraints which could hinder EPA's ability to effectively manage a program greater than $5.3 billion. The following highlights those constraints.

TECHNICAL LEGAL CONSTRAINTS

There is currently inadequate capacity to properly treat, store, or dispose of hazardous wastes. Two factors related to landfill capacity will continue to exacerbate this problem. First, there are presently few double-lined facilities which meet the technical standards established under the Resource Conservation and Recovery Act (RCRA). Second, the land disposal restrictions established under the 1984 RCRA amendments limit options available for disposing of hazardous wastes. These factors could slow the pace of cleanup in the short-term until additional capacity or alternative disposal methods become available.

TREATMENT/PERMANENT TECHNOLOGY CONSTRAINTS

There are a number of developing technologies for the permanent treatment and/or destruction of hazardous wastes. These technologies include incineration as well as biological and chemical degradation of wastes. Although some of these technologies have been proven to be technically feasible, commercial availability is quite limited. As the demand for permanent treatment and/or destruction of wastes increases in the next few years, the availability of permanent technologies should improve. However, in the short-term, the lack of sufficient commercially available technologies could limit the extent to which the pace of the program could be increased.

MANAGERIAL CONSTRAINTS

The Superfund program has grown rapidly over the past five years. Rapid growth makes effective management difficult. Expansion of the program over the next five years will continue to be hampered by the ability to recruit, train, and retain professional staff; provide adequate space, equipment, and administrative and logistical support; as well as establish contract capacity to handle the additional workload.

The ability to recruit, train, and retain staff is particularly significant. Time is required to locate, hire, train, and integrate personnel into the program. In addition, competition from the private sector has hindered the EPA's ability to recruit and retain personnel, especially senior managers.

I appreciate the opportunity to share these concerns with you. I am fully committed to the goals of the Superfund program and look forward to continuing our work on reauthorizing Superfund.

Sincerely,

LEE M. THOMAS,
Administrator.

Mr. HELMS. Mr. President, I am obliged to oppose S. 51 as reported by the Committee on Finance and the Committee on Environment and Public Works.

I object to a number of S. 51's provisions including the reauthorization levels, the manufacturer's environment excise tax (the MEET tax), the citizen suits, the Victim's Assistance Program, the statutory denial of preenforcement review, and the denial of joinder of parties and claims.

Let me summarize by reiterating some points I have already made.

First, Mr. President, I object to S. 51's reauthorization level of $7.5 billion.

Mr. President, EPA officials have said on more than one occasion that recognizing the manpower and technical capabilities of EPA, the Agency cannot effectively administer more than $5.3 billion.

At a March 15, 1984, hearing on Superfund, Lee Thomas, then Assistant Administrator, now EPA Administrator, warned:

> Additional infusions of funding beyond EPA's capabilities "could have a paradoxical effect of retarding our activities, not speeding them up, and too great a rate has the potential for promoting fiscal waste.

Furthermore, Mr. President, S. 51 would expand Superfund beyond its initial scope of cleaning up dangerous hazardous waste sites. S. 51 would divert Superfund moneys from cleaning up sites to funding victim assistance programs, health assessment and health studies programs, alternative water supplies in certain cases of ground water contamination. Additionally, under S. 51, Superfund would pay the costs of litigation including attorney and expert witness fees to the prevailing or substantially prevailing party. This dilution of cleanup funds flies in the face of Superfund's goals and threatens rapid cleanup.

For these reasons, I am convinced that authorizing Superfund beyond $5.3 billion is not a wise or a responsible step for this Congress to take.

Second, Mr. President, I object to the imposition of the MEET to fund Superfund. S. 51 would impose a 0.08 percent value added tax on the sale, lease, or import of manufactured tangible personal property. Small manufacturers, those with less than $5 million of taxable receipts, and small import shipments, those under $10,000, would be exempt from the tax.

This concerns me for two reasons. First, the theory behind Superfund is to tax those companies which create hazardous waste. By imposing a VAT tax we are losing this vital link. The absence of direct correlation between who pays and who receives departs from the general practice of other Federal trust funds.

Mr. President, proponents will argue, of course, that the tax is so small that it is negligible. This is true, but one only needs to look at the history of Federal taxation to see the danger of creating another Federal revenue source.

In 1937 the U.S. Government imposed on the American taxpayer an average tax of $79. In 1983, the American taxpayer paid an average tax of $3,536.00, an increase of more than 4,475 percent.

The Social Security tax has ballooned as well. In 1937, the American wage earner paid about 1 percent on the first $3,000 of their wages to Social Security, a maximum of $30 paid. In 1983, the wage earner paid about 6.70 percent on the first $35,700 of his income to Social Security, a maximum tax of $2,391.90.

In light of these statistics and our Government's unquenchable desire for revenue, I oppose creating the MEET tax.

Third, I oppose section 129, which creates a Victim Assistance Demonstration Program to provide medical assistance to victims of exposure to hazardous substances released into the environment.

Mr. President, under section 129, the EPA will choose 5 to 10 geographical areas which it believes are increased risk areas due to hazardous substance releases. These areas will then participate in a 5-year medical program providing medical screening and treatment. Superfund will pick up the tab if the responsible parties have not obligated themselves to pay.

Under the bill, two forms of medical assistance are available. For persons without any symptoms, a secondary group medical benefits policy will provide for periodic medical screening. For those persons who have symptoms of such a disease or injury, under section 129, the State will provide a secondary group medical policy to cover costs of treatment. Individuals in this category will also receive from the State program reimbursement for past medical costs associated with that illness if not paid by another source.

Mr. President, I oppose section 129 for several reasons. First, medical research just does not legitimize establishing this program. There is no evidence showing a widespread pattern of significant chronic illness caused by exposure to hazardous waste disposal sites. Even if causation does exist, there is no evidence that the illnesses cannot be compensated approximately through traditional liability. Mr. President, if this Victim Assistance Program does become law, the end result will be an open-ended medical entitlement program based on need and not based on liability.

In addition, this program should, if it does not already, attract criticism from the environmentalists. This program would only divert substantial funds from cleanup efforts, impeding Superfund's goal of cleaning up hazardous waste sites.

Mr. President, the U.S. taxpayer just cannot afford this program. The Victim Assistance Program will follow the same course as the Black Lung Program.

The Black Lung Program was established in 1969 to:

> Provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis. 30 U.S.C. 901 (1969).

The Black Lung Program was supposed to be a temporary program, terminating in 1976 with an estimated cost of $350 million. Contrary to this intent and these projection, the Black Lung Program has ballooned to a program that in 1981 compensated some 460,000 individuals, more than twice the number of coal miners employed at that time, with a cost to the American taxpayer of $11.8 billion, a cost more than 30 times the initial cost projection.[1]

Mr. President, the American public cannot bear the financial burden of the cost of additional programs such as the Victim Assistance Program in S. 51.

Mr. President, establishing a program of ths nature brings us even closer to national health insurance. I pose the question of Senator Simpson in his remarks found in the committee Report on 51.

> Should we as a society allocate resources to compensate individuals above and beyond what is generally available solely because they are singled out on the basis of political muscle or immediate public concern?

Mr. President, my answer is resounding "No."

Mr. President, I realize that the Senate Committee on Finance refused to provide the $30 million requested. Nonetheless, this Congress must eliminate the language from the bill so that neither this Congress nor any other Congress can fund this program.

Fourth, Mr. President, I object to S. 51's creation of citizen suits.

Section 118 creates a right for citizens "to sue in Federal court to enforce standards, regulations, conditions, requirements, and order under the act and to seek the performance of nondiscretionary duties under the act by the President or delegees of the President." Additionally, section 118 would provide any person with a statutory right to intervene as a party to suits filed by the administrator or the State under Superfund or the Solid Waste Disposal Act. In addition, the section authorizes the court to award costs of litigation to the prevailing or substantially prevailing party.

Mr. President, I oppose section 118 for a number of reasons.

Suits of this nature would shift the focus of toxic tort litigation from the States to the Federal Government. By ancillary jurisdiction, the Federal courts will be forced to hear claims involving neither Federal questions nor diversity of citizenship.

Mr. President, not only does this shift take power away from the States, but it also places undue hardship on an already overloaded Federal court system. In the western district of North Carolina alone, there are almost 1,000 cases still pending, 90 percent of which are civil cases. Broadening the Federal judiciary involvement in toxic tort litigation is both unnecessary and unwise.

Furthermore, Mr. President, citizen suits divert millions of dollars from hazardous waste sites cleanup to litigation costs. If anyone doubts this probability, I suggest that they study the amount of Superfund moneys which has already been spent on litigation. Presently, Superfund has spent $117,181,400 on litigation alone. Surely, the public, since they are truly interested in hazardous waste cleanup, would prefer their money to be spent on waste cleanup and management, rather than on expert witness and attorneys' fees.

Fifth, Mr. President, I oppose section 118 which denies pre-enforcement review of an administrative order.

Mr. President, many Federal statutes provide authority to compel action for emergency purposes, but with the exception of few draft statutes, there are no Federal statutes on the books which limit judicial review. Due process before a denial of property is guaranteed in our Constitution.

Mr. President, in rebuttal to the argument that pre-enforcement review might jeopardize the public safety, I argue that courts must meet a number of criteria before it can stay an administrative order, and that the courts have in the past and will in the future act expeditiously to uphold or stay an administrative order.

Mr. President, I warn my colleagues, that jeopardizing constitutional guarantees for the sake of hazardous waste cleanup is a dangerous if not fatal course for this Congress to follow.

Finally, I oppose sections 106 and 107 of S. 51 which denies joinder of parties and joinder of claims as guaranteed by rules 18, 19, and 20 of the Federal Rules of Civil Procedure. Never, and I repeat never, in the history of this Nation has the U.S. Congress enacted Federal legislation denying a party the benefit of rules 18, 19, and 20 of the Federal Rules of Civil Procedure. Withholding from litigating parties the right to join claims and parties in one suit clogs the court with duplicative cases, as well as, burdens parties with twice the cost of litigation they would otherwise have to bear. Mr. President, I just cannot support legislation which puts such an overwhelming hardship on our courts and litigating parties.

Mr. President, I urge my colleagues to look behind S. 51's facade as a pro-

environment bill. If Senators in this Chamber are truly interested in the rapid cleanup of hazardous waste sites, they will oppose the diversion of Superfund moneys from cleanup to the numerous other programs and litigation costs as provided in S. 51. Additionally, they will heed the words of EPA Administrator, Lee Thomas, that infusion of funds above and beyond what the EPA can handle could adversely affect cleanup.

I oppose S. 51 as introduced, and I urge my colleagues to do the same.

I yield the floor.

Mr. STAFFORD. Mr. President, I must as chairman of the Committee on Environment and Public Works rise in opposition to the amendment of my good friend and very valuable committee member, Senator SYMMS.

Much has been made here of the alleged cost of two or three sites. Let me point out that each year EPA is facing 200 emergency situations they must respond to and they are beginning work on 115 hazardous waste sites across the country. So that at the present time I believe EPA is working to clean up some 200 hazardous waste sites here in this country.

The size of the problem facing us as a Nation has been touched on, but I will remind my colleagues that the estimate of EPA, which is the smallest of any of the estimates in this area, is that there will be some 22,000 hazardous waste sites across the country which will have to be checked for hazardous substances present and probably about 2,000 of those sites will result in EPA having to take on a remedial response to clean them up.

So it is a major problem and, as the Senator from Vermont said in his opening statement some days ago, the American people are very deeply concerned about the presence of hazardous waste dumps, toxic chemicals in the country.

We believe the American people want those sites to be taken care of and they want us to get about the job on an expeditious manner.

That is what we propose to do in the bill which the Committee on Environment and Public Works reported out by a vote of 15 to 1 and the Committee on Finance I believe also reported it out on a vote with only one dissent.

Let me remind my colleagues, also——

Mr. SYMMS. Mr. President, if my distinguished chairman and good friend will yield, they were Senator DOLE and myself in that committee.

Mr. STAFFORD. I beg your pardon?

Mr. SYMMS. There were two in the Finance Committee and the distinguished majority leader was one of those two.

Mr. STAFFORD. The Senator is correct. I accept that correction.

Let me also remind my colleagues that this program is a self-financing program, that it will have no impact upon the budget deficit in any of the next 5 years in which it may be in operation, that it raises sufficient revenues through the existing tax that has supported it for the most part over the last 5 years and the additional tax system which has been devised by the Finance Committee.

So, it is a self-liquidating program. There is no impact on the deficit. It pays for itself as it goes.

The Committee on Environment and Public Works, as my good friend, Senator SYMMS, has pointed out voted for a 5-year program at $7.5 billion in total or $1.5 billion a year with one dissent, that of Senator SYMMS.

And the reasons that we felt in the committee that $5.3 billion was inadequate to finance the program over the next 5 years are these: First of all, the cost of cleaning up a hazardous waste dump has increased from 1981 when cost cleanup per site averaged $2.5 million, to 1983 when it had risen to $4.5 million. In 1984, the cost per site had reached $6.5 million per site and currently the cost per site is running at $8.1 million. So the costs are rapidly escalating in cleanup per site. That was one of the reasons we felt $5.3 billion would be inadequate.

Another was that in our judgment the Environmental Protection Agency in ts budget submission did not take into consideration the impact of inflation on the cost of operating this program over the next 5 years, and surely much as we would like to prevent it there will be inflation over these next 5 years and even if we are lucky it will certainly be in the realm of 3 to 4 percent.

So, escalating cost per site, not taken into consideration by the Agency in its budget submission, the inflation at a rate of 3 to 4 percent minimum, inflation was not taken into consideration by the Agency at all, nor were the costs of damages to natural resources belonging to the people of this country which may occur and are likely will occur and for which no provision was taken into consideration in the view of this Senator on the part of the budget submission at $5.3 billion.

Finally, various amendments contained in S. 51 as we reported to the Senate on a vote of 15 to 1 provide for a number of programs which over the next 5 years will cost, according to administration or staff calculations, the following sums:

Relocation provisions, $187 million; the lab testing, $200 million; health studies, $220 million; clinical training, $45 million; citizen suits, $176 million; State credit, $40 million; operation and maintenance costs, $200 million; and if the victim assistance program stays in the legislation, $150 million. All of these are aggregate costs over a period of 5 years and they total $1.218 billion.

It is for recognition of those costs plus the cost increasing at sites for cleanup overlooking damages to natural resources and inflation that the committee determined in its wisdom that the cost of this program over the next 5 years should be $7.5 billion.

So I think we are at the point I would say to may colleagues where we have to make a decision. It is time for us to decide whether we want to go with the decision of the three committees that have had access to this legislation and have reported it out and expedite the cleanup of hazardous wastes dumps and toxic spills about this country as the American public wants us to, or whether we determine to slow down at a lesser pace than the committee believes the American public wants.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SYMMS). The Senator from Texas.

Mr. BENTSEN. Mr. President, I want to join with the chairman of the committee in opposing this amendment.

I understand where the Senator from Idaho is coming from. I have some of the same concerns that he has expressed as to whether or not the funds could be effectively spent. We went into that issue at some length.

But the $7.5 billion that we are talking about now is one that is based on the testimony of experts including the Environmental Protection Agency. Of course, he cites the fact that EPA said $5.3 billion would be enough, that it was what they could utilize but they did not take into consideration some of these other things that are going to happen. We are talking about their cleaning up this first year 115 Superfund sites and it is estimated they are going to be called on for about 200 emergencies during the year. That takes a lot of money.

In addition to that, as the chairman has stated, they did not provide for inflation and what is going to happen in that regard.

When you get through with these things and add them together, the Environmental Protection Agency estimated that the additional things imposed by this bill would add another $1 to $1.5 billion.

Consequently, when we got through with the deliberations, we came up with a figure of $7.5 billion. What you have to remember is: Two committees of Congress reviewed and agreed on this particular number, one, the Environment and Public Works Committee, and the other one, the Finance Committee.

But then some of us had a concern: Suppose these conditions changed? Suppose all of a sudden there is no inflation? Then there ought to be some way to cut out the tax and not collect the rest of the money. So we did that in title II of S. 51, as reported from the Finance Committee. It provides a mechanism where the tax would terminate if the fund failed to use this money at the rate that we have anticipated. And we put that trigger in to say that, on September 30, 1988, or 1989, if you had $1.5 billion in the fund and you projected over the next 12 months that you were going to have at least that much without the imposition of the tax, then you would stop the tax, cut it out.

The tax would be suspended for 1989 for the determination made for 1988 and for 1990 for determination made in 1989. So, overall, what you are seeing here is the work of two committees that had their hearings, devoted a great deal of time to it—and it is a tough and complicated subject—and they have come up with a program level which they think the agency can meet based on the current expectations of cost. If they do not meet it, then the tax goes off and we do not spend the taxpayers' money, and the Government does not get the money. The bill provides that kind of an additional protection.

With that in mind, I think that we have a balanced bill and a sound one and that the amendment would not be helpful. I hope that the Senate will oppose it.

Mr. BAUCUS. Mr. President, the Committee on Environment and Public Works carefully considered the scope of Superfund. The $7.5 billion called for in S. 51 is a prudent, well thought-out program level. This proposal to reduce the scope of Superfund to $5.3 billion was considered and rejected.

There clearly is a need for a greatly expanded Superfund Program.

EPA estimates that in the near future about 2,000 sites will reach the national priorities list. Many people feel this estimate is low. The Congressional Office of Technology Assessment estimates that more than 10,000 sites may require cleanup.

In March, only 30 percent of the 538 sites now on the national priority list were receiving remedial cleanup attention, even though about $1 billion had been committed.

In short, cleanup is proceeding at a slower pace than any of us desire. It is apparent that more money is needed.

The less money Congress devotes to this program, the longer it will take to address the problem of hazardous waste cleanups.

By failing to adequately fund Superfund now, Congress may be courting an environmental crisis in the future.

Each day a hazardous waste dump—one requiring remedial cleanup—remains unaddressed only exacerbates future problems. The size of the problem grows larger, the health threat increases and the cost of ultimate cleanup is greater.

There is a need to significantly increase the pace of cleanups.

The $7.5 billion program approved by the Environment Committee is a minimum program.

But, it is a realistic level in view of our ability to raise revenue.

The Finance Committee carefully considered the fiscal impacts of raising revenues to pay for Superfund.

Based on this evaluation, we made several decisions.

The chemical feedstock tax is retained. This tax currently provides the bulk of Superfund financing—approximately $200 million per year.

The theory behind this tax is to tax the first hazardous substance in the production line. This reasoning still makes sense.

However, the Committee on Finance concluded that an increase in this tax could have serious adverse consequences for the international competitiveness of our mining, petroleum and chemical industries.

It was for that reason the feedstock excise tax was retained at its current level.

The committee then looked at a series of alternative taxing schemes, including a waste end tax, and general revenues.

A waste end tax may make sense as environmental policy, but it will be an extremely difficult and costly tax to administer. If not carefully thought out, it could lead to an increase in "midnight dumping" of hazardous wastes

But the most serious flaw in a waste end tax is that it will change the way people handle hazardous wastes. The more people change the way they handle hazardous wastes, the less revenue raised.

Unfortunately, the Superfund problem doesn't decrease. The need for cleanup at hazardous waste dumps stays the same or increases since the longer it takes to get a site cleaned up the larger the problem becomes.

Thus, the waste end tax poses a dilemma. If it is small enough so as not to alter people's hazardous waste disposal activities, it doesn't meet its environmental objective or provide needed funding.

If the tax is high enough to be a potentially significant revenue raiser, it will likely change people's waste disposal habits and cause a shortfall in revenues for Superfund.

The existing Superfund law relies upon general revenues for approximately 13 percent of its funding.

The proposal as reported by Finance no longer relies upon general revenues to meet the needs of the Superfund trust fund, which is the correct approach.

The public should not be forced to pay for the environmental problems caused by private corporations.

For both of these reasons, any general revenue proposal should be rejected.

The responsible approach to Superfund is to raise the funds needed through fair, equitable taxes. It is for this reason that the Finance Committee came up with a new excise tax.

Superfund sites involve all segments

of our society. To date, EPA has identified over 4,000 industry, government, and consumer businesses as potential responsible parties. Potentially responsible parties include the aircraft, automobile, computer, textile, food and beverage, furniture, semiconductors, building supply, and utilities industries.

Everyone contributed to the problem, and therefore, everyone should contribute to cleaning up the problem.

The Superfund problem is largely the result of the inadequacy of past hazardous waste management technologies and practices, not of current waste generation.

These past waste management practices allowed us to manufacture goods for less than the true cost of production. All manufacturing companies have benefited from these low-cost waste management practices.

The Superfund excise tax says wake up, manufacturing community. You are part of the problem. The problem is pervasive. It is the responsibility of all industry to finance the cleanups where responsible parties cannot be located or are defunct.

A broadly based, low rate, industry and product-neutral manufacturers' excise tax can finance the Superfund Program to the extent of its needs without disadvantaging any manufacturer against its domestic or foreign competitors.

The amendment before us to reduce the size of Superfund to $5.3 billion is a smoke and mirrors proposal. It does not provide the funding needed to address the problem. It does not fairly spread the burden of the costs of the program to those responsible for causing the problem and it will lead to larger Federal deficits in the future.

It should be rejected.

Mr. PACKWOOD. Mr. President, I wish to address the Senator from Texas and the Senator from Vermont. I have some technical amendments that are cleared on both sides. If there is no objection, what I am up against is I was supposed to chair a committee hearing this morning and I will chair it this afternoon and, instead of going back and forth, I would like to offer them now.

I ask unanimous consent that we may temporarily set aside the amendment we are considering now and proceed to my amendment.

Mr. BENTSEN. I certainly have no objection, as long as it is cleared by the distinguished Senator from Idaho.

Mr. STAFFORD. I would have no objection, if the present occupant of the chair has no objection.

The PRESIDING OFFICER. Without objection, the amendment is temporarily set aside.

AMENDMENT NO. 659

Mr. PACKWOOD. Mr. President, I send a series of technical amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislation clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD], for himself and Mr. LONG, proposes an amendment 659.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as following:

On page 121, strike out line 10.

On page 124, line 1, insert "TITLE II—" before "AMENDMENTS".

On page 134; line 11, strike out "(3)" and insert in lieu thereof "(4)".

On page 134, lines 18 and 23, strike out "(b)(5)" and insert in lieu thereof "(b)(8)".

On page 137, beginning with line 22, strike out all through page 138, line 2, and insert in lieu thereof the following:

"(1) in the case of a taxable transaction described in paragraph (1) of section 4003(a)—

"(A) the manufacturer of the tangible personal property, or

"(B) any person who included the costs of the tangible personal property in such person's qualified inventory costs, and

On page 141, lines 10 and 11, strike out "exempt from tax under chapter 1" and insert in lieu thereof "exempt from taxation under chapter 1 by reason of section 501(a)".

On page 142, beginning with line 20, strike out all through page 144, line 5, and insert in lieu thereof the following:

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified inventory costs' means, with respect to any taxable period, the costs of tangible personal property which—

"(A) are allocable to the inventory of a manufacturer under the full absorption method of accounting under section 471, and

"(B) are paid or incurred by the taxable person during such taxable period.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION.—The qualified inventory costs of any taxpayer for any taxable period shall, in lieu of any allowance for depreciation or amortization, include any amount paid or incurred during such taxable period for tangible personal property acquired or leased incident to, and necessary for, production or manufacturing operations or processes.

"(B) Taxpayers using methods of accounting other than the full absorption method.—In the case of a taxable person using a method of accounting other than the full absorption method used in determining the inventory of a manufacturer under section 471, the qualified inventory costs of such person shall, except as provided in regulations, include only those costs included in the inventory of a manufacturer under such full absorption method.

"(C) Property manufactured for lease by manufacturer.—For purposes of computing qualified inventory costs, any tangible personal property which is manufactured for lease by the manufacturer shall be treated in the same manner as property which is manufactured for sale by the manufacturer.

On page 145, lines 24 and 25, strike out "(determined on an annual basis)".

On page 148, lines 4, 21, and 24, strike out "The" and insert in lieu thereof "For purposes of this chapter, the".

On page 149, line 15, strike out the end quotation marks and the end period.

On page 149, between lines 15 and 16, insert the following:

"(j) Special Rule for Short Taxable Periods.—In the case of a taxable period which is less than 1 calendar year, there shall be substituted for the $4,000 amounts in subsections (a) and (d) of section 4013 and the $5,000,000 amount in section 4022(a)(2) the amount which bears the same ratio to such amounts as the number of days in the taxable period bears to 365.

"(k) Sale to Include Certain Exchanges and Transfers.—For purposes of this chapter, except as provided in regulations, the term 'sale' includes any exchange or transfer other than a gift (within the meaning of section 102 or section 170).".

On page 155, line 6, strike out "Response Trust Fund" and insert in lieu thereof "Superfund".

On page 161, between lines 4 and 5, insert the following:

(b) Effective Date.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

On page 135, strike out lines 3 and 4, and insert in lieu thereof the following:

(e) Certain Exchanges by Taxpayers Not Treated as Sales.—Subsection (c) of section 4662 (relating to use by manufacturers) is amended to read as follows:

"(C) Use and Certain Exchanges by Manufacturer, Etc.—

"(1) Use treated as sale.—Except as provided in Subsection (b), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) Special rules for inventroy exchanges.—

"(A) In general.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) Exception for exchanges where recipient not taxable.—Subparagraph (A) shall not apply to any inventory exchange if the person receiving the taxable chemical would not be subject to tax on the sale of such chemical (other than by reason of subsection (b)).

"(C) Registration requirement.— Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(D) Inventory exchange.—For purposes of this paragraph, the term 'inventory exchange' means an exchange in which a person exchanges property which, in the hands of such person, is property described in section 1221(1) for property of another person which, in such other person's hands, is so described.".

(f) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 1985.

(2) Inventory exchanges.—

(A) In general.—Except as provided in subparagraphs (B) and (C), the amendment made by subsection (e) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) Exception where manufacturer paid tax.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (e) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of the Internal Revenue Code of 1954 and paid the tax imposed by such section.

(C) Registration requirements.—Section 4662(c)(2)(C) of such Code (as added by subsection (e)) shall apply to exchanges made after December 31, 1985.

Mr. PACKWOOD. Mr. President, I

have assured the Senate that I have cleared these with both sides. They are indeed technical.

I ask unanimous consent that the amendments be considered en bloc and that they be adopted together.

Mr. **BENTSEN**. Mr. President, I say to the distinguished chairman of the Finance Committee that we have no objection on this side to these amendments.

Mr. **STAFFORD**. Mr. President, for the majority, while this matter is really under the jurisdiction of the Finance Committee rather than the Committee on Environment and Public Works, on this side, for the Committee on Environment and Public Works, we have no objection to it.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment.

The amendment (No. 659) was agreed to.

Mr. **PACKWOOD**. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **STAFFORD**. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 637

Mr. **PACKWOOD**. Mr. President, might I direct myself to the merits of the funding level of the Superfund.

There is honest disagreement among the Senator from Idaho and the Senator from North Carolina and myself and the Senators from Texas and Vermont and others as to what the proper funding level should be. If the issue were to be made, should we put off—and that is what we are talking about—put off cleaning up these sites and spend only $5 billion to $5.2 billion or $5.3 billion over the next 5 years because we have other more urgent priorities, and if this was weighed against the other priorities, you might be able to say, "We know we are going to have to do it eventually, but let us not do it now."

The problem is we are going to have to do it eventually and it is only going to get more and more and more expensive the longer we put it off.

From the EPA's own studies, the cost of a clean-up per site has gone from $2.5 million in 1980 to $6.5 million in 1984 to $8.3 million, estimated, in 1985. And if what we want to do is rob Peter to pay Paul and put off the inevitable day of clean-up with the concomitant danger that goes with postponing the clean-up, then let us understand that is what we are doing. Let us not pretend we are saving any money. We are postponing the spending of more money which we will spend later on.

As to whether or not the agency can spend $7.5 billion, roughly, instead of $5.5 billion roughly over 2 years, the Congressional Reference Service did a study as to whether there was a sufficient number of laboratory technicians, scientists, and others concerned with the clean-up, and they concluded clearly the money could be intelligently spent. The Office of Technology Assessment estimates that we will have to spend about $100 billion over the next 50 years on clean-up. That is $2 billion a year. That would be $10 billion over the next 5 years on the average.

Most importantly, perhaps, the Sierra Club went right to the root of who administers this program. They went to the regional offices, 10 regional offices, and they asked the people in those offices: "Could you intelligently spend more money than the administration asks?" And the response was, universally, "yes."

So while I realize the disagreement is honest and while I realize the administration wants to postpone the spending of this, all I am saying to my fellow Senators is that by postponing it we will spend more money later on than we will spend now. And the sooner we get at this job, the less it is going to cost us. So I would encourage all of my colleagues to vote against the adoption of the amendment of my good friend from Idaho. I thank the Chair.

Mr. **STAFFORD**. Mr. President, I anticipate that we will probably reach a rollcall vote with respect to the pending Symms amendment.

Mr. **MITCHELL**. Mr. President, I will speak briefly in opposition to the pending amendment. As a member of both the Environment and Public Works Committee and the Finance Committee, which considered this, and as one who participated in the drafting of the original Superfund legislation, I believe that the amount contained in the bill itself is the minimal amount appropriate to the task immediately before us.

I understand that the distinguished

Senator from Idaho, who also serves on both of those committees, has argued, as the administration did before committees, that an amount greater than that proposed in his amendment could not be effectively utilized. But Members of the Senate should know that when the administration testified before both committees, they acknowledged that their estimate of the amount necessary to fund this program, the amount above which any funds could not be effectively spent, was based on an estimation that there would be no inflation in the United States over the next 5 years.

And I would ask whether there is any Member of the Senate, or whether there is anybody in the United States who believes that there will be zero inflation over the next 5 years. The answer is obviously no, an it is clear that the administration itself does not believe that, because with respect to virtually every other program the President's budget contemplates a certain level of inflation over the next 5 years. The only question is how much that will be.

So when the administration says this is the amount which we need and we cannot spend any more than that, everybody should answer that was based upon an estimate of zero inflation, a view shared by no one else in this country, not even by the administration with respect to any other program, and certainly not those programs which the administration supports.

In addition, that estimate was based on a calculation by the administration that the average cost of cleaning up a site would not increase over the next 5 years, even though the history of the program to date provides overwhelming evidence to the contrary. Each year since this program has been in existence the EPA has revised its estimate of the cost of cleaning up the site on an average around the country, and each year the estimate has increased until it is now three times as much as it was in 1981.

The most reliable predictor of future human behavior is past human behavior. While no one can be certain of precisely what will occur, it is simply not credible to believe that a cost of cleanup which has risen every single year since the program started by a significant sum will suddenly for the next 5 years not increase by a cent. The likelihood is entirely to the contrary; that is, that the average cost of cleanup will increase at an at least as rapid rate as in the past, if not a more rapid rate, because the fact is we are learning that the problem of cleanup at these sites is often a complex, and difficult engineering task. It is no easy task even to identify the scope of the problem when you are dealing with for example contamination of underground water systems, let alone to actually clean it up. That is, of course, what we are discovering with distressing frequency.

So I urge the Members of the Senate to consider just those two facts in determining that the amount contained in the committee bill is the minimal amount necessary—indeed, the same EPA to which I have already referred has acknowledged in independent reports that the scope of the problem is even greater than the amount contained in this bill, and that the number of sites that require cleanup—the estimate which itself is increasing each year—means this total cost of cleanup could, according to the EPA, reach as high as $22.7 billion. That is the upper level of the range of estimates that they have made based on the current number of sites they have identified, and they recognize in each of the number of sites that may have to be cleaned up that has increased each year.

So I urge the Members of the Senate to adhere to the amount contained in the legislation as really the minimal amount that ought to be made available to continue this critical task of cleaning up the many thousands of hazardous waste sites which currently scar our Nation's countryside, and threaten the public health and the environment of many millions of American citizens.

I thank the Chair.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER (Mr. GARN). The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise to oppose the amendment offered by the Senator from Idaho to reduce the funding level provided for in S. 51 for the Superfund Program. This amendment would provide for funding as we have heard it, $5.7 billion, only slightly higher than the level requested by the administration earlier this year, and the level of funding was the subject of hearings in both the Environment and Public Works Committee and the Finance Committee during their consideration of S. 51.

It was rejected decisively because both committees felt, and experts from whom they heard, that this level is unacceptable to make any serious progress or enough serious progress in cleaning up toxic waste sites around the country at an acceptable pace.

Progress in cleaning up Superfund sites has been painfully slow to this point. Only six sites have been cleaned up and removed from the NPL, the national priority list. And this is not acceptable to those people who live in these communities. There is no State exempt from this problem—not one in all 50. The Superfund national priority list currently lists 850 sites as eligible for Federal cleanup assistance. That means that there are at least that many seriously threatening toxic waste sites. EPA has identified over 20,000 other sites that are prospects for listing, and, of these, 4,000 will likely end up on this priority list. In addition, removal actions in response to spills and other releases also number in the hundreds each year.

The Governors in this country who have responsibility for dealing with toxic waste crises on a daily basis agree that they deal firsthand with the frustration and fear that is building up in communities all across the country—communities with water supplies shut off because wells have been contaminated; communities unable to protect the health of their citizens, young and old alike; communities unable to attract new jobs and industry because of the toxic dumps in their neighborhoods. We need to approve a program that is going to make meaningful progress in addressing this glaring public health and environmental problem. And for this reason the National Governors' Association supports a $8 billion Superfund Program. The NGA arrived at this figure building from the ground up. They think it is the minimum level acceptable to face the cleanup program needed in their States. EPA estimates that it will cost $11.7 billion to $22.7 billion to clean up the 1,800 to 2,200 sites they expect to put on the NPL list in the near future. The General Accounting Office which completed an overview of the Superfund Program just this March estimated that cleanup of these sites could range between $17 billion and $40 billion.

The administration sent up a proposal earlier this year to fund the program at $5.3 billion. This funding level was rejected by nearly unanimous votes in both the Environment and Public Works and Finance Committees. Many members on these committees felt that the administration's cost estimates for cleanup needs were unrealistic. They did not take account of inflation—or the dollar or of cleanup costs. They assume an extremely high rate of cost recovery from responsible parties—far higher than EPA has been able to realize to date. And they do not adjust for deteriorating conditions at sites even though experience has shown that delay in cleaning up sites increases the ultimate cost.

In sum, the Symms amendment assumes a limited and painfully slow pace to the program. A more realistic figure—just to maintain the pace of the current program—is the $7.5 billion included in S. 51.

Mr. President, I believe we should provide even a higher level of funding so that EPA is able to expand the pace of the program and fund the provisions that have been added in the bill before us.

I would like to close my statement with a personal note. Last year, Ray Adams, a citizen of Pomona Oaks, NJ, testified before the Environment and Public Works Committee.

His community's household water supplies were contaminated with benzene, a potent carcinogen. Ray was advised by the New Jersey Department of Health to take short showers, under light sprays; to open windows when taking a shower to air the room; and to close his bathroom door after a shower to prevent chemicals from contaminating his house. The Center for Disease Control advised him to stop using his water completely the center indicated that benzene was such a potent carcinogen that zero exposure was recommended.

Using the authorities of Superfund and its own State spill fund, New Jersey was able to respond and replace the drinking water for Ray and the citizens of Pomona Oaks. The aquifer underlying Pomona Oaks has been designated a Superfund site. These are positive developments for Pomona

Oaks.

But, unfortunately our country is dotted with hundreds of Pomona Oaks. The citizens of Lowell and Woburn, MA, who came with their children to testify before our committee, told stories of other children lost to leukemia. There are few States where these kind of horror stories have not been told.

It is imperative that we clean up these sites, and protect the American public from the hazards of toxic wastes.

I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, just to summarize in case anyone has not heard what this amendment does, this, as I said, is the crawl, walk, run amendment. I have heard all the discussion and debate. I believe the distinguished Senator from North Carolina and I both agreed there is no one who is against cleaning up toxic waste sites. But I say, here we go again, to the U.S. Congress. We are going to go whole hog. We are going to throw $1.5 billion at this problem.

I just heard my friend from New Jersey referring to sites. I will say where one of the sites is, it is in Kellogg, ID, in Shoshone County. It is where the Bunker Hill Smelter used to be. The building is there but that is all. They smelted 25 percent of the lead and silver in the United States. Do you know what one of the worst hazards in Kellogg is today? It is that they do not have any jobs. That is a much bigger risk to their health and security than a pile of slag that has been sitting there since 1880. It has been building up each and every year.

It is stable. There is a problem, there is some metal in it. I do not say there are not some problems. But the worst part of the problem has already been corrected. They now say they want to spend $50 million on it. I guess they want to move it to the other side of the mountain, getting it away from there. Then you will stir up the dust and what have you. Now it is all stable in a huge pile.

I say that is one of those very hazardous sites. People are living there. Some people are over 100 years old. At the last centennial, one person was 95 and another was 90. One asked, "What is this about spending $50 million over at the old site? What you ought to do is spend $50 million to reopen the mine, reopen the mill, so the young people can have jobs."

We closed it down. The EPA was part of it. They spent millions of dollars there to meet EPA standards but each time EPA would change the rules again. If it were not EPA, it was the State of Idaho. It is a constant thing that has gone on. It does not happen just in Idaho but it happens everywhere.

We have virtually run the nonferrous mills out of business in the United States. They operate offshore.

When they closed the mill in Kellogg, some of the mines in the area found out that by shipping their product offshore, having it processed offshore and brought back to the United States, they actually got a higher price back to the mine because they were doing it more efficiently offshore. I guess partially they had less of these concerns.

I want to say again to my colleagues this amendment is facing reality. The liability question is not answered, the tax problem is not answered. I would say to my colleagues, we are starting off on a whole new form of taxation. I have to say that the current set of taxes, if we are going to raise and spend $1.5 billion a year, will run what is left of the chemical refinery industry out of the United States and we will have more places where they will have old mills and people will say, "I wonder what they used to do there."

When the mills were all running, we were strong and industrially independent and did not have to rely on foreign sources for almost everything we use.

The tax problem is not answered. The liability problem is not answered. We are spending 50 percent of the money that is being spent on transaction costs. Transaction costs, and so many people in this Chamber are in that very respectable profession, means that you pay attorneys to sue each other. That is what it amounts to.

The distinguished Senator from New Jersey and I do not happen to be in that group. We come from the business world.

Mr. President, I just think it is a very reasonable approach that this amendment calls for. It calls for doubling the amount of money we spend next year, tripling the amount the next year, quadrupling the amount the next year, and go the whole hog the fourth year. So you will get to your $1.5 billion.

I will say one more thing. I do not think there is a single person who thinks that the other body will spend anywhere near as reasonable on amount of money as I am proposing. They will probably have a program that calls for $10 billion. They had a program last year that called for $13 billion for the 5-year period which was more money than the people they proposed to tax had in profits for the entire industry.

I say this is an opportunity to show a little moderation, a little restraint, and to do a job that needs to be done. By moving moderately we will work the bugs out of the process and get more toxic waste sites actually cleaned up than we are going to get cleaned up if we throw all of this money at it.

We are still going to be throwing a lot of money at it. I say to my colleagues, if you think you have a lot of toxic waste sites now, do you want to know how to grow toxic waste sites? They will grow like trees in the forests. Once the public discovers how to have a toxic waste site so they can get the money from the Government to spend in their county, everybody will have a toxic waste site. They will grow like the trees in Maine, I say to my friend. They will find these places where people have put stuff in the past and they will qualify. Then we will put money out there. For what? Something that has been in the ground for all those years?

There are sites that we do need to clean up. All of us agree to that. Let us do that.

As I say, let us crawl, then let us walk, and then we will be able to run with this program and clean it up. It will be much more successful. It will be a much better job for the taxpayers of the United States. It will be much responsible. That is all I am asking for, a very moderate approach to this.

Mr. President, I yield the floor.

Mr. **LAUTENBERG**. Mr. President, in a quick response to my friend from Idaho, crawling before walking is an interesting theory, except if one has to go to the hospital, one usually runs. Many in our country feel these sites are health threatening and impose a grave and imminent danger. I think it is fair to say that, if a site is on the list, it is threatening the water supply or the health or safety of the citizens nearby, and it ought to be paid attention to.

However, if the good Senator from Idaho would surrender the site in Kellogg, ID, maybe we could reduce the cost to the Superfund by the $50 million that that one might cost.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from North Caroline [Mr. EAST], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Oregon [Mr. HATFIELD], are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD], would vote "nay."

Mr. CRANSTON. I announce that the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Montana [Mr. MELCHER], are necessarily absent.

I further announce that, if present and voting, the Senator from Montana [Mr. MELCHER], would vote "nay."

The PRESIDING OFFICER (Mr. GORTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 15, nays 79, as follows:

[Rollcall Vote No. 192 Leg.]

YEAS—15

Denton
Garn
Gramm
Hatch
Hecht
Heflin
Helms
Kassebaum
Laxalt
McClure
Nickles
Stennis
Symms
Wallop
Zorinsky

NAYS—79

Abdnor
Andrews
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
Exon
Ford
Glenn
Gore
Gorton
Grassley
Harkin
Hart
Hawkins
Heinz
Hollings
Humphrey
Inouye
Johnston
Kasten
Kerry
Lautenberg
Leahy
Levin
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford

DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Long
Lugar
Mathias
Matsunaga
Mattingly
McConnell
Metzenbaum
Mitchell
Stevens
Thurmond
Trible
Warner
Weicker
Wilson

NOT VOTING—6

Armstrong
East
Goldwater
Hatfield
Kennedy
Melcher

So the amendment (No. 637) was rejected.

Mr. **STAFFORD.** Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. **PROXMIRE.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The **PRESIDING OFFICER.** The Senator from Vermont.

Mr. **PROXMIRE.** Mr. President, will the Senator from Vermont yield?

Mr. **STAFFORD.** I yield to the Senator from Wisconsin.

SUPERFUND TAXES

Mr. **PROXMIRE.** Mr. President, I am disappointed that the Finance Committee selected value-added taxes to raise revenues for the Superfund Program.

While the committee's new formula improves on existing law by decreasing Superfund's dependence on Federal funds, in every other respect it is unfair, uneconomic and inefficient.

Groups as diverse as the Citizens for Tax Justice, the National Taxpayers Union and the U.S. Chamber of Commerce all agree that value-added taxes are regressive, poorly targeted and add to inflation. Even worse they are sneaky taxes, since no one sees them imposed.

Unlike the existing Superfund feedstock taxes and my own waste-end tax proposals, value-added taxes make no connection whatsoever between polluters and the costs they impose on society. In fact, value-added taxes, imposed broadly on all manufacturers, totally violate the principle of polluter-pays which should be at the heart of all our environmental laws.

On April 4, I introduced a waste-end tax proposal, S. 886, aimed at polluters. The bill was introduced in the House by Representatives SCHNEIDER and WYDEN, who also joined with me in 1983 in offering an earlier version of this tax.

S. 886 would impose a simple two-rate tax system keyed to the regulatory requirements of the Resource Conservation and Recovery Act, taxing deep well injection of wastes at $5 a wet ton and all other forms of land or ocean disposal at $20 a wet ton.

Treatment which renders waste nonhazardous such as recycling, incineration and neutralization would receive a full credit against the tax.

This relatively modest tax would not impose a heavy burden on small business, but, according to EPA studies, would provide a very real economic incentive for big waste producers to cut down on their wastes and dispose of them safely.

Such a tax would probably raise about $300 million a year as designed, or with slight modifications, about $600 million. Obviously this would not raise all the revenue needed for an adequate fund, but could form a substantial part of any tax program.

The Office of Technology Assessment, Congressional Research Service, National Association of Solvent Recyclers, National Academy of Sciences, National Federation of Independent Businessmen, Chemical Manufacturers Association and the administration support a waste-end tax approach.

Mr. President, it seems likely that the House will include waste-end taxes as at least part of their funding package. I hope my colleagues on the conference will give this proposal their careful consideration.

AMENDMENT NO. 660

Mr. **HEINZ.** Mr. President, I have an amendment that has been cleared. This amendment need not take very long. I have discussed it on both sides of the aisle, and I will be pleased to discuss it briefly.

The amendment, which I will send to the desk in a moment, would authorize the establishment of regional research centers within universities and medical institutions to perform biological and genetic research on the long-term effects of exposure to hazardous substances in the environment.

By examining the future effects of exposure and by carrying out basic and applied research on these effects, the research centers will complement the EPA's existing health programs authorized by Superfund.

The research centers would be located at universities where the necessary expertise for examining fundamental but unanswered questions about the long-term health effects of toxic waste already exist.

The expansion of Superfund by S. 51 reflects a heightened understanding of the size and scope of the toxic waste problems we face. Accordingly, I believe that we must expand our research capability to explore the impact of toxic substances on health and genetic development and to find a way of minimizing that impact. Such research will help us anticipate where future needs lie and will help us plan for them. My amendment would provide the basis for this capacity.

Mr. President, I ask unanimous consent to have printed in the RECORD a detailed explanation of the amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REGIONAL RESEARCH CENTERS TO STUDY THE BIOLOGICAL AND GENETIC EFFECTS OF EXPOSURE TO TOXIC SUBSTANCES IN THE ENVIRONMENT

It is in the national interest for Congress, acting through the Environmental Protectional Agency and its Agency for Toxic Substances and Diseases Registry, to establish regional centers at universities, research and medical institutions that will study the biological and genetic effects of exposure to hazardous substances found in our environment.

Under the Comprehensive Environmental Response and Liability Act of 1980 (CERCLA), the Agency for Toxic Substances and Disease Registry was charged with carrying out the health related authorities of the Superfund program, including the establishment of a national registry of serious diseases and persons exposed to toxic substances and the conduct of periodic surveys and screening programs to determine relationships between exposure to toxic substances and illness. The research programs of the proposed regional centers will be a logical and important addition to these health programs.

When the Superfund law was enacted in 1980, it was designed to address what was believed at the time to be a relatively limited problem. The EPA was instructed by the Congress to clean up only 400 known toxic waste sites. It was believed that cleaning up these sites would be relatively easy and inexpensive, involving the moving of containers and scraping a few inches of contaminated ground. Today, five years after the enactment of that law, our understanding of the toxic waste problem in our country is vastly different. There are an estimated 10,000 toxic waste sites in the United States, many of them serious threats to the environment and the health and safety of Americans.

As a result, Congress must move forward to come to grips with this serious and massive problem. This involves not only the expansion of the Superfund clean-up effort, but also an expansion of our efforts to determine the health effects, both immediate and long-term, of exposure to toxic substances.

Faced with an ever-growing agenda of critical environmental priorities to deal with and a limited budget with which to work, the EPA will be hard pressed to carry out necessary basic and applied biotechnical research on toxic substance exposure. The results of such research will, for example, provide the nation with significant information about (1) the long-term health effects of human, animal and plant exposure to toxic substances; (2) the biological and genetic effects of such exposure; and (3) possible solutions to present and future health problems caused by exposure to toxic contamination.

A number of educational, research, and medical institutions in our country have the expertise to carry out such research which would compliment and supplement that which is now being carried out by the EPA. Congress should tap these vast resources through the establishment of regional centers for the study of the biological and genetic effects on the environment of exposure to toxic substances.

Mr. HEINZ. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ] proposes an amendment numbered 660.

Mr. HEINZ. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

HEALTH RELATED AUTHORITIES—SECTION 110

Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "develop and construct regional centers at appropriately qualified universities, research and medical institutions for the study of the biological and genetic effects of wastes and materials found in the environment."

Section 111(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "subject to such amounts as are provided in appropriations Acts, all costs necessary to develop and construct regional centers for study of the biological and genetic effects on humans, animals and plants of wastes and materials found in the environment."

Mr. STAFFORD. Mr. President, for the majority, I say that we have examined the amendment offered by the able and distinguished Senator from

Pennsylvania, and we are prepared to accept it.

Mr. **BENTSEN**. Mr. President, we have examined the amendment, and I see no objection.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 660) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 661

Mr. BYRD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 611.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 118, after line 19, insert the following new section:

"SEC. . (a) The Administrator of the Environmental Protection Agency is directed to initiate, not later than thirty days after enactment of this Act, a comprehensive review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances for the purposes of this review. Such extremely hazardous substances shall be the same substances and quantities listed by the Council of the European Communities in its "Council Directive of June 24, 1982, on the Major Accident Hazards of Certain Industrial Activities, Annex III", published in the official Journal of the European Communities, August 5, 1982. The Administrator shall report interim findings to the Congress not later than 210 days after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than 365 days after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

"(b) The report required by this section shall include the Administrator's findings regarding:

"(1) the status of current technological capabilities to: (A) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (B) determine the magnitude and direction of the hazard posed by each release, (C) identify specific chemicals, (D) provide data on the specific chemical composition of such releases, and (E) the relative concentrations of the constituent chemicals;

"(2) the status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances to the environment, including: releases into the atmosphere, surface water, or groundwater, from facilities that produce, store, or use significant quantities of such extremely hazardous substances; and

"(3) the technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances to the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

"(c) The report required by this section shall also include the Administrator's recommendations for:

"(1) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

"(2) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances."

Mr. BYRD. Mr. President, I ask the distinguished manager of the bill whether he anticipates that there will be more rollcall votes today on this bill and will the Senate complete its action on the bill today?

Mr. STAFFORD. I say to the distinguished minority leader that he knows how uncertain things can be in this body; but as of right now, unless there are some amendments that I am not aware of, it would appear to me that it would be safe to say that it is unlikely that there will be more rollcall votes.

Mr. BYRD. Mr. President, I cannot hear the distinguished Senator, and he is only 4 feet away from where I am standing.

The PRESIDING OFFICER. The Senator from West Virginia is correct. The Senate is not in order. The Senate will be in order. Senators conversing on the floor will cease their conversations.

Mr. STAFFORD. Mr. President, if the Senator will yield, I will repeat: So far as I know, as the majority manager of this bill, it appears to be unlikely that there will be any more rollcall votes this afternoon, although there are some additional matters that may be discussed. It would be helpful for any Members who have amendments on which they require a rollcall vote to let us know.

Mr. BYRD. I thank the distinguished Senator. I hope the distinguished majority leader will let us know soon what might be expected for the rest of the day with respect to rollcall votes.

Mr. President, the amendment I offer to S. 51, known as the "Superfund Reauthorization" bill, addresses the issue of emergency monitoring at facilities which manufacture, store, or use extremely hazardous substances. My amendment directs the Environmental Protection Agency to conduct a review of emergency monitoring systems in use at such facilities and report the results to Congress.

We are all aware that the domestic chemical industry plays a vital role in the American economy. Indeed, the production and use of chemical substances are fundamental aspects of economic activity in the United States. In States such as West Virginia, the industry is an important source of employment. For example, in the area of my State which is known as the Kanawha Valley, the chemical industry accounts for two out of every three manufacturing jobs.

However, Mr. President, our economy relies on a prodigious variety of chemical substances, including a number which are extremely hazardous. As a society we do not have the luxury of simply declaring that we will no longer use such substances. We can, however, undertake efforts to protect public health by ensuring that we have the capability to detect, monitor, and prevent large-scale, accidental releases of extremely hazardous substances. We can also work to ensure that we have the capability to alert the public in a timely manner in the event of an accidental release.

There is a need for developing adequate information regarding the status of technological capabilities for monitoring, detecting, and preventing such releases. We also need to develop information regarding the status of public emergency alert devices of systems. The amendment I am offering would be a first step in that effort.

My amendment directs the EPA to conduct a survey and report its findings regarding the status of current technological capabilities to monitor, detect, and prevent significant releases of extremely hazardous substances; to identify specific chemicals; and to provide data on the specific chemical composition of such releases, including the relative concentrations of the constituent chemicals.

My amendment does not envision a survey of all facilities and all extremely hazardous substances. Rather, it calls on the Administrator to look at "representative domestic facilities," and allows him to select "representative extremely hazardous substances" for the purpose of this amendment.

The definition of "extremely hazardous substances" in my amendment is based on the so-called "Seveso list," which was developed by the European Economic Community in 1982 in response to a major release of dioxin in Seveso, Italy.

My amendment also requires EPA to include in its report the Agency's findings regarding the status of public emergency alert devices or systems for providing timely warning to the public of an accidental release.

Finally, the Agency's report will include its findings regarding the technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting accidental releases of extremely hazardous substances.

My amendment provides ample time for the Environmental Protection Agency to conduct its review, and to report its findings. It requires the Agency to issue an interim report of findings to the Congress within 6 months of enactment of the Superfund reauthorization bill, and requires the Agency to issue its final report within 1 year of enactment.

The Agency's final report will include recommendations regarding initiatives to support the development of new or improved technologies or systems which would facilitate the timely detection of releases of extremely hazardous substances. The report would also include recommendations for improving devices or systems for alerting the public in the event of an accidental release.

My amendment will provide information on the status of monitoring capabilities at facilities which produce or use extremely hazardous substances. I am hopeful that this information will prove useful to efforts to improve these capabilities. Such improvements could not only save employees and the surrounding public much anxiety, they also could save lives.

Mr. President, my amendment is noncontroversial, and I understand that the committee is willing to accept it.

Mr. President, I ask unanimous consent that Mr. LAUTENBERG be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I am pleased to cosponsor the amendment of the Senator from West Virginia. This amendment directs EPA to undertake a comprehensive review of emergency systems for monitoring, detecting and preventing releases from facilities which manufacture, store or use extremely hazardous substances. Under the amendment, EPA is required to report interim findings within 7 months, and make a final report to Congress, incluidng findings and recommendations, within 1 year on emergency monitoring systems at chemical facilities.

Mr. President, this amendment is a helpful complement to an amendment I offered earlier in this debate to facilitate community emergency preparedness and response in the instance of a chemical release. Under my amendment, emergency planning committees would be estalished in communities with facilities that house extremely hazardous substances just about the time that EPA would make an interim report under the Byrd amendment. They would be working on their emergency response plans at the time that EPA would issue its final report.

Mr. President, I share a strong and common interest with the Senator from West Virginia over the dangers posed by chemical releases. The economics of both of our States benefit significantly from jobs and commerce associated with the chemical industry. In New Jersey, we are the third largest producer of chemicals in the country, and the most densely populated State of the Nation. Thus, we have a strong interest in improving our ability to prevent chemical releases and our capability to respond to such incidents, should they occur.

Mr. President, the Senator from West Virginia's amendment is a helpful addition to the work the Environment and Public Works Committee has done on emergency prevention, preparedness and response and I am honored to join with him in offering this amendment. It is a significant contribution to our work.

Mr. President, I urge my colleagues to support the Byrd amendment.

Mr. BYRD. Mr. President, it is my understanding that the managers may be willing to accept my amendment. I would hope so.

Mr. STAFFORD. Mr. President, for the majority, we are indeed willing to accept the amendment offered by the most able and distinguished minority leader.

Mr. BENTSEN. Mr. President, let me say that the logic of the distinguished minority leader is overwhelming. I am delighted and see no objection on this side.

Mr. BYRD. Mr. President, I thank both managers.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment (No. 661) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 557

Mr. CRANSTON. Mr. President, I have introduced an amendment No. 577 which would increase the authorization for the Nation's hazardous waste cleanup program to $10 billion.

Rather than calling up the amendment at this moment, I want to explore the Superfunds financial situation and meet with the managers of the bill.

Senators KERRY, PELL, LAUTENBERG, and HAWKINS have joined as cosponsors of the amendment.

As my colleagues know, S. 51, as reported from committee, is intended to raise $7.5 billion, including almost $500 million in interest. About $1.5 billion would come from the existing tax on crude oil and feedstock chemicals. And $5.4 billion would come from a new value-added tax on manufacturers and raw material producers who have sales and lease income of more than $5 million a year. The tax rate under the committee bill is 0.08 percent.

My amendment raises an additional $2.5 billion—bringing the Superfund to $10 billion—by increasing the rate of the Finance Committee's value-added tax to 0.115 percent.

This means manufacturers grossing at least $5 million in sales or lease income would pay 11½ cents for every $100 they receive as sales or lease receipts. This is only a few pennies more than the committee proposed—a minute increase when you consider the tremendous importance of cleaning up the threat that toxics pose to our country.

Clearly, we need this additional money.

Earlier this year, the Reagan administration indicated that $12 billion will be needed to clean up the 786 worst sites listed on the Superfund National Priority List. That list has now grown to 850 sites—final and proposed. And the Environmental Protection Agency estimates that it will ultimately add some 1,500 to 2,500 more sites to the national cleanup list.

A study done for an association of State hazardous waste officials predicts as many as 7,000 sites may require Superfund cleanup.

The General Accounting Office estimates the final cleanup tab at $40 billion.

The Congressional Office of Technology Assessment estimates even more money will be needed. According to OTA, eventually there may be 10,000 Superfund sites that could cost $100 billion to clean up.

I know that EPA Administrator Lee Thomas has testified that the hazardous waste program is constrained by a shortage of trained personnel available, such as project managers and hydrologists, a shortage of qualified laboratory facilities, and a shortage of proper disposal facilities for waste from Superfund sites.

However, a June 1985 survey of EPA regional offices found that the technicians, hydrologists, and regional EPA officials responsible for managing Superfund believe all these problems can be resolved as soon as adequate funding becomes available to buy better lab service, pay better salaries, and build more waste disposal facilities. In sum, the most serious shortage in the Superfund program is money.

The survey found that lab shortages will be cured if the EPA pays competitive prices for its lab work. The report shows that 8 out of 10 regional offices have no trouble finding qualified people to work in the Superfund Program. The other two regions say they could attract more and better qualified people if they could offer better salaries. The waste disposal problems also can be helped by increasing spending.

Congressional studies by the House Appropriations Committee and the Congressional Research Service agree that lab, personnel, and waste disposal problems shouldn't prevent EPA from expanding the Superfund Program.

As an official in EPA region 5 (the Chicago office) put it, EPA "can get as much work done as we get the money and people to do."

Congress must provide the funds for EPA to do the job right, because the health of American citizens is at stake. And the funding must be at a level to do the vital cleanup job. Otherwise, our hazardous waste cleanup program is certain to drag on into the 21st century, carrying with it a legacy of toxic waste.

Control and cleanup of toxic wastes has the support of the overwhelming majority of the American public. In a national survey, over 74 percent of those asked about disposal of hazardous waste called it a very serious problem, the most serious environmental problem we face.

I am convinced Superfund needs at least $10 billion over the next 5 years to make an effective start in the cleanup program—to address the shortages identified and take into account inflation, the rising costs of individual cleanup and new responsibilities given under this bill.

The Natural Resources Defense Council, the League of Women Voters, the AFL-CIO, the United Steelworkers of America, the Sierra Club, the U.S. PIRG, Environmental Action, Public Citizen's Congress Watch, National Audubon Society, and Citizen Action all support increasing Superfund to $10 billion.

Mr. LAUTENBERG. Mr. President, the Senator from California will be withdrawing his amendment to increase the level of funding provided for in S. 51 to $10 billion. I understand why he is doing this. However, I am a cosponsor of this amendment and want to express my support for it.

We have already engaged in debate on appropriate funding levels today, in the context of Senator SYMMS' amendment to reduce the $7.5 billion provided in the bill to $5.7 billion. That amendment was defeated decisively. At that time, I outlined my strong opposition to it, and expressed my support for a funding level even higher than that provided for in S. 51.

In February, before markup on S. 51, I introduced my own Superfund legislation, S. 493, the Superfund Expansion and Improvement Act of 1985. This bill provided for a $10 billion funding level over the next 5 years, in addition to suggesting programmatic changes to Superfund, many of which have been incorporated into S. 51.

Mr. President, based on EPA's own studies, the cleanup of existing and future Superfund sites will require even more than $10 billion. The National Governors Association recommended that the Congress approve at least $9 billion in Superfund monies. The House of Representatives will likely approve a $10 billion funding level. Mr. President, I have worked with the Senator from California on this amendment and support this level of funding. I commend him for his concern and initiative on this issue.

Mr. CRANSTON. Let me say at this point, Mr. President, that I have discussed this amendment and the Superfund needs and the toxic waste threat to our country with a great many Senators. I now have no doubt but that a majority of Senators, taking people on both sides of the aisle, know that we need more than $7.5 billion, more than $10 billion, to clean up Superfund sites and will be spending more than those sums in the course of the not too distant future.

However, it was not clear that a majority felt that it would be wise to have an amendment calling for $10 billion voted upon at this time and therefore not clear that a majority, even though they know we are going to need the money and need it rather soon, would be prepared to vote for the amendment.

For that reason I would like now to discuss the funding situation with the two managers of the bill and I will start with my friend from Texas, since he is at my elbow.

Mr. BENTSEN. I would say to my distinguished friend from California, who has long shown his interest in trying to clean up these toxic waste sites and has been a great deal of help to us on the committee, that I share his concerns. I make my personal commitment that, as we develop this bill and this funding issue continues to unfold and we see what the costs are, if additional funds are necessary to meet this challenge, then certainly I would support more funding. But, we cannot project at this point exactly how much that would be, obviously. I am sympathetic to what the Senator is trying to do here and I understand the reasons for it.

Mr. CRANSTON. I appreciate that very much. I am sure the Senator is aware that the Reagan administration has stated it will take more than $10 billion to clean up the hazardous waste problems we face.

Mr. BENTSEN. I say to my friend there is no question about that. We all know it is going to take more than that amount of money to accomplish it. The question will be how fast we can get on with the job and do it effectively. And I am very hopeful we can do it much faster than we have projected.

Mr. CRANSTON. I appreciate that very much. I would now like to, ask the distinguished manager of the bill if he would respond to this question. We have had private conversations and I would just like to get on the RECORD what I believe the Senator feels—that we are going to need more than $7.5 billion and more than $10 billion to clean up the hazardous waste sites that are a threat to our country in so many ways. The only question in the Senator's mind I gather is how soon we will have to spend the funds and how soon we can make further sums available.

Mr. STAFFORD. If the distinguished Senator will yield, I would reply that I agree that the problem is enormous, that the expenditure of sums is going to be large before we have completed the work of cleaning up of hazardous waste dumps and toxic spills in this country. Were the economic situation of the Nation such and our deficit and debt structure such that we could do it, the chairman of the Environment and Public Works Committee would be the first to ask for more than $10 billion in each of the next 5 years. But I am constrained, by the size of our debt and the size of our deficits and the realities of what can be done this year and passed and signed into law, to the $7.5 billion over the next 5 years.

It is with great reluctance that I am unable at this time to join in a larger sum of money. I just hope circumstances will occur that will allow me to join the Senator from California in seeking larger sums to more expeditiously dispose of the hazardous waste problems in this country that most of our citizens want taken care of and want it done as quickly as possible.

Mr. CRANSTON. I appreciate the comments of the two managers of the bill very much. I anticipate that the needs will become more apparent and the opportunity will be at hand before 5 years are up and that therefore I will be back and I hope then with the Senators' full support in seeking more funds sooner for the Superfund cleanup.

Mr. STAFFORD. I think we can look forward to that.

Mr. CRANSTON. I thank the Senator very much. With that understanding, I will not press the amendment.

Mrs. HAWKINS. Mr. President, I rise in strong support of the amendment by the Senator from California. In the 5 years since Superfund was authorized, the Environmental Protection Agency has completed action on only six sites listed on the national priority list. Of the 850 hazardous waste sites on that list, EPA has not even begun cleanup on over 80 percent. Superfund was enacted in order to respond to emergencies. Is it not about time that we give EPA the tools it needs to carry out its task?

Nothing infuriates me more than EPA's statements, as wrongheaded as they are consistent, that the Agency does not need more than $1 billion a year, indeed that it could not spend more than that amount if it wanted to. The Sierra Club, after interviewing the people who actually administer the Superfund Program in the field, found that despite the statements of OMB's hatchetmen, EPA could move quickly and efficiently to clean up hazardous waste sites if it had the money.

My own State illustrates the urgency of this matter. Florida relies almost entirely on aquifers to supply its drinking water. Most of its aquifers lie close to the surface and could easily be contaminated by a leaking waste site. Many of them already have; $10 billion dollars is not a small sum of money. I assure you, though, that it will seem like pennies if we are faced with the problem of purifying our suplies of drinking water, an enormously expensive undertaking.

I do not take lightly a vote to institute a broad-based tax. I think it is safe to say that no one has stood the line against tax increases more steadfastly than I. The danger to our environment is so great that I must reluctantly agree to the broad-based tax. No one, including the administration, has been able to devise a better or fairer method of supplying the levels of funding we need for Superfund.

It would be the worst kind of fiscal irresponsibility to take the money out of general revenues or borrowing authority. Who would pay the tax for that? That is the real "hidden tax." The same could be said for the waste-end tax. The waste-end proposals floating around are so ambiguous that no one really knows what the effect would be. By my book, that is a "hidden tax."

The Environmental Protection Agency has admitted that it will take at least $10 billion, and probably far more, to clean up the sites on the national priority list. The Office of Technology Assessment has put the figure at closer to $100 billion. I urge my colleagues to provide EPA with the funding it clearly needs.

Mr. LAUTENBERG. Mr. President, it is urgent that the Senate pass the Superfund authorization before the end of this fiscal year and I am glad to see that we are finally making some progress.

But passing this bill is only half of the job. Once we have an authorization in place, we have to make sure that the necessary funds are appropriated without delay. As you know, both the House and Senate Appropriations Committees deferred action on the Superfund appropriation in the HUD-independent agencies appropriation bill (H.R. 3038) pending passage of authorizing legislation.

Once this authorizing bill is passed it is important that we move as quickly as possible to include funds for the Superfund Program in the HUD appropriations bill. The bill has been reported and is on the calendar awaiting Senate action. I would hope that it could be brought to the floor without delay.

It is imperative that we add the appropriation needed to assure that the resources of the Superfund are made available as promptly as possible.

I see the distinguished ranking minority member of the HUD-Independent Agencies Subcommittee is on the floor. Would the Senator from Vermont tell us what the likely schedule is for the HUD appropriation bill and whether or not it is likely that the funding for the Superfund Program will be included in the 1986 bill.

Mr. LEAHY. In our committee report we noted that although the committee deferred funding, "* * * it continues to strongly support the program." The budget resolution already assumes that the Superfund will be reauthorized and funded in this bill. If the Superfund authorization passes the Senate, I intend to offer an amendment to fund Superfund in the 1986 appropriation bill. I will be working with the chairman to see if this can be a bipartisan effort. I very much appreciate the Senator from New Jersey bringing this matter to the Senate's attention. He has been a leader on this issue in both the Environment and Public Work and in the Appropriations Committees. I would look forward to making this a joint effort with the Senator from New Jersey.

Mr. LAUTENBERG. I am glad to know that the distinguished banking member, Mr. LEAHY, concurs on the urgency of action on this matter. I will be pleased to join with him in working to get an amendment adding Superfund to the bill adopted. I would welcome the opportunity to cosponsor his amendment and I share his aim of making this an entirely bipartisan effort—the health and safety of our people is not a partisan issue.

AMENDMENT NO. 662

(Purpose: To amend the Solid Waste Disposal Act to clarify the jurisdiction of the Environmental Protection Agency over the regulation of hazardous waste mixed with radioactive materials at Department of Energy Atomic Energy Act facilities)

Mr. GLENN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] proposes an amendment numbered 662.

Mr. GLENN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of title I add the following new section:

REGULATION OF MIXED HAZARDOUS WASTE

SEC. . (a) FINDINGS.—The Congress finds that—

(1) the generation, transportation, treatment, and storage of hazardous waste mixed with radioactive material poses potential hazards to public health and safety unless carefully planned and managed;

(2) the Department of Energy's Atomic Energy Act facilities are real or potential producers of such hazardous waste mixed with radioactive material; and

(3) the authority of the Environmental Protection Agency to regulate the disposal of hazardous waste mixed with radioactive material at the Department of Energy's Atomic Energy Act facilities should be clarified.

(b) PURPOSE.—The purpose of this section is to clarify the intent of Congress that the generation, transportation, treatment, and storage of hazardous waste mixed with radioactive material is subject to the Solid Waste Disposal Act, and that the disposal of hazardous waste mixed with radioactive material at Department of Energy Atomic Energy Act facilities, and at other facilities not licensed for the disposal of radioactive materials, is also subject to such Act.

(c) CLARIFYING AMENDMENT TO DEFINITIONS OF SOLID WASTE AND HAZARDOUS WASTE.—Section 1004(27) of the Solid Waste Disposal Act is amended—

(1) by inserting "(A)" after "(27)";

(2) by striking out ", or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)"; and

(3) by adding at the end thereof the following new subparagraphs:

"(B) Except as otherwise provided in subparagraph (C), the term 'solid waste' does not include source, special nuclear, or byproduct materials as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

"(C) The terms 'solid waste' and 'hazardous waste' shall each include mateials described in subparagraph (B) when—

"(i) such materials are part of any mixture or combination, if the other constituent part of such mixture or combination is a 'hazardous waste' within the meaning of paragraph (5), and

"(ii) such materials (I) are in the stage of generation, transportation, storage, or treatment, or (II) are disposed of at an Atomic Energy Act facility of the Department of Energy or other unlicensed location;

except that, this subparagraph shall not apply to wastes disposed of at a 'repository' as defined in section 2(18) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(18).)".

(d) APPLICABILITY OF AMENDMENTS.—(1) This section and the amendments made thereby are clarifying in nature with respect to the purpose stated in subsection (b), and shall not be construed as altering the intent of Congress as to whether the Solid Waste Disposal Act, as in effect prior to the amendments made by this section, applies to mixtures and combinations of hazardous wastes which contain radioactive material which are disposed of at facilities licensed by a State or by the Nuclear Regulatory Commission, or as altering the applicability of any standards or requirements issued pursuant to the Solid Waste Disposal Act.

(2) Nothing in this section shall be construed to affect, modify, or amend the Uranium Mill Tailings Radiation Control Act of 1978.

Mr. GLENN. Mr. President, I rise to offer an amendment to S. 51, the Superfund Improvement Act of 1985. This amendment is based on a bill I introduced in April 1985, S. 892, "The Mixed Hazardous Waste Amendment Act of 1985."

The primary purpose of this legislation is to clarify the intent of Congress that the generation, transportation, treatment, and storage of hazardous waste mixed with radioactive materials is subject to the Solid Waste Disposal Act. In particular, the amendment clarifies the intent of Congress that the disposal of hazardous waste mixed with radioactive materials at Department of Energy Atomic Energy Act facilities, and at other facilities not licensed for the disposal of radioactive materials is subject to the Solid Waste Disposal Act.

Mr. President, I am aware that the Environment and Public Works Committee has attempted to deal with the general issue of mixed waste regulation, and that there have been difficulties in resolving the question of Agency jurisdiction, particularly with respect to NRC licensed facilities. This amendment avoids this problem by specifically dealing only with DOE Atomic Energy Act facilities and by being specifically neutral on the regulation of the disposal of hazardous waste at State-licensed or NRC-licensed facilities.

The amendment is needed because some officials in the Department of Energy have indicated that there is, in their view, some ambiguity in the legislative history of RCRA as far as the regulation of mixed hazardous waste at DOE defense sites. I do not believe Congress intended any ambiguities in this area, and so I am introducing this amendment.

The need to clarify this regulatory authority has been graphically illustrated by the recent series of events at the Feed Materials Production Center in Fernald, OH. The Fernald plant which manufactures uranium billets—metal ingots, for our nuclear production reactors, was constructed in 1951 and became fully operational in 1954. Owned by DOE, the Fernald facility is one of a number of plants throughout the United States owned by the Government and operated under contract.

Documents released by the contractor, National Lead of Ohio [NLO] and DOE show that an estimated 5 million kilograms of uranium and mixed wastes have been buried on the Fernald plant property in rubber or clay lined pits on the 1,050 acre site. Although the lining of the pits is designed to prevent leakage, unusually high concentrations of uranium have been found in wells south of the plant. In addition to the storage pits, there are drums of hazardous waste on site. Some of the drums have leaked hazardous waste into a nearby storm sewer. While this situation has been corrected, no action was taken by DOE until EPA discovered the situation during a routine inspection under RCRA. More appalling still is the fact that DOE has been monitoring well water off-site only since 1981.

Unfortunately, the situation at Fernald is not unique for these facilities. DOE's preferred method for disposing of this waste has been to dump solid hazardous and mixed waste into open trenches or burial grounds. In 1983, seepage ponds at DOE's Oak Ridge, TN, facility were found to be leaking metal plating wastes, acids and organic solvents into groundwater at a rate of 4.7 million gallons per year. Evidence of similar contamination has surfaced at other major DOE facilities such as the Savannah River plant in Aiken, SC.

For this reason I have requested GAO to investigate eight separate plants around the country. That investigation is underway now and we are expecting a report on this by very early next year.

The bill before us, SSI, addresses the cleanup industrial sites. However, there are also a significant number of Government-operated sites that face environmental threats and should be addressed.

I believe that the Secretary of Energy and other applicable Federal agencies should request an adequate funding level in their appropriations to clean up sites that threaten human health and the environment. The Government has the responsibility to clean up sites it owns just as industry is called up to pay for its contribution.

Mr. President, I urge DOE as they read the RECORD of our debate to make certain next year's budget request contains an adequate funding for this cleanup. Examples of DOE sites in this category are, for instance, Savannah River, SC, Oak Ridge, TN; Rocky Flats in Colorado; and Hanford in Washington. I am pleased to see new awareness of this problem and to see that the Secretary of Energy, Mr. Harrington recently announced that he is appointing a new Assistant Secretary for Environment Safety and Health to investigate into this situation. I urge the Secretary of Energy to ensure that this new position carries the necessary authority to aggressively cleanup sites and to present the creation of new sites.

Mr. President, I further believe that this amendment will be a significant step forward in correcting a number of problems which currently exist in America as nuclear facilities—problems that have developed both because we were not as sensitive as we should have been on the issue of health and safety and because DOE in the past with 20-20 hindsight being what it is was over-zealous in encouraging nuclear production and under-zealous—not zealous enough—in demanding environmental protection.

As a society we know better. Therefore, although plants like Fernald are essential to the security of our country we must see to it that the cost of that security does not include the health of our people.

So I urge support for this amendment.

Mr. President, I would appreciate any comment that the distinguished floor managers of the bill might have.

Mr. STAFFORD. I would like to commend my colleague from Ohio for this initiative, which is carefully crafted to try to avoid some very contentious issues that have plagued the committee and the Senate in the past. Unfortunately, the issue of mixed hazardous wastes at Department of Energy sites cannot be separated entirely from the more general issue of mixed waste regulation. I believe the chairman of the Environmental Pollution Subcommittee, which has jurisdiction over the Solid Waste Disposal Act, would agree.

Mr. CHAFEE. I agree with the distinguished floor manager, and I wish to commend the senior Senator from Ohio for his amendment. We are closely monitoring the activities of the agencies involved in this complex issue, as I know my distinguished colleage from Wyoming, who chairs the Nuclear Regulation Subcommittee, is also doing.

Mr. SIMPSON. As my distinguished colleague from Rhode Island is aware, the issue of mixed wastes at NRC-licensed facilities is a difficult issue we have grappled with repeatedly in the past. I have reviewed the amendment of the senior Senator from Ohio and appreciate that he has attempted to address only the DOE aspects of this issue. As our esteemed floor manager has suggested, however, it is difficult to divorce the DOE facilities from the rest of the mixed waste issue.

Mr. GLENN. I would like to ask the chairman of the Environmental Pollution Subcommittee if he plans on reviewing this issue in the future, and whether this legislation would be considered in a hearing.

Mr. CHAFEE. Unless the agencies resolve this issue, we will address it in a hearing during the next session. I would be pleased to have the senior Senator from Ohio testify on this proposal at such a hearing. I would also be pleased to have the participation of the Senator from Wyoming.

Mr. SIMPSON. I would be happy to continue working with my colleagues to try to develop an amicable resolution to this issue.

Mr. GLENN. I appreciate the interest expressed by my colleagues from Rhode Island and Wyoming and look forward to the opportunity to appear before the Environmental Pollution Subcommittee.

We agree that we will have hearings on this next year, and trying to work out what has been impossible for the committee to resolve in its previous efforts.

With that being the understanding, Mr. President, I ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 662) was withdrawn.

Mr. BENTSEN. I say to the Senator from Ohio that managing for the minority I am pleased to anticipate any colloquy, and with the agreement of the distinguished chairman, of course, the hearings.

Mr. GLENN. Mr. President, I yield the floor.

Mr. STAFFORD. Mr. President, I am advised that the able Senator from South Carolina, the chairman of the Judiciary Committee and the President pro tempore of this body, will shortly be available to us. I will proceed to describe an amendment which I will propose for him, myself, and others to S. 51.

AMENDMENT NO. 663

(Purpose: To amend the contribution and review provisons, to make technical corrections, and for other purposes)

Mr. STAFFORD. Mr. President, I send a series of technical amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER (Mr. Nickles). The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. Stafford], for himself, Mr. Thurmond, Mr. Hatch, Mr. East, Mr. McConnell, Mr. Laxalt, Mr. DeConcini, Mr. Simpson, Mr. Denton, Mr. Specter, Mr. Heflin, Mr. Mathias, and Mr. Grassley, propose an amendment numbered 663.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 91, strike out lines 5 through 19 and insert in lieu thereof the following:

"(l)(1) Any person may seek contribution from any other person who is liable or potentially liable under subsection (a), during or following any civil action under section 106 or under such subsection (a). Such claims shall be brought in accordance with section 113 and the Federal Rules of Civil Procedure, and shall be governed by Federal law. Nothing in this subsection shall diminish the right of any person to bring an action for contribution or indemnification in the absence of a civil action under section 106 or this section.".

On page 91, line 20, strike out "(3)" and insert in lieu thereof "(2)".

On page 91, line 23, strike out "under paragraph (2) of this subsection".

On page 92, line 4, strike out "(4)" and insert in lieu thereof "(3)".

On page 92, line 8, strike out "for the remainder of the relief sought".

On page 92, line 14, strike out "a State or".

On page 92, line 16, after "United States" insert "or the State".

On page 92, line 18, after "113" insert ", and shall be governed by Federal law".

On page 105, lines 7 and 8, strike out "Administrative Office of the United States courts" and insert in lieu thereof "judicial panel on multidistrict litigation authorized by section 1407 of title 28, United States Code".

On page 105, line 15, strike out "Administrative Office" and insert in lieu thereof "judicial panel on multidistrict litigation".

On page 106, lines 7 and 8, strike out "Administrative Office" and insert in lieu thereof "judicial panel on multidistrict litigation".

On page 106, line 24, insert "(b)" after "104".

On page 107, line 2, insert "(b)" after "104".

On page 107, line 8, strike out "only objection" and insert in lieu thereof "objections".

On page 107, line 10, strike out "107" strike out through "comment" on line 12 and insert in lieu thereof the following: "must be based upon the comments received and the evidence contained in the record".

On page 107, line 14, after "unless" insert "the objecting party can demonstrate, on the administrative record, that".

On page 107, lines 14 and 15, strike out "arbitrary and capricious or" and insert in lieu thereof "not reasonably justified under the criteria set forth in the national contingency plan, including the cost effectiveness of such action, or that the decision was,".

On page 107, line 17, strike out "arbitary and capricious or" and insert in lieu thereof "not reasonably justified under the criteria set forth in the national contingency plan, including the cost effectiveness of such action, or that the decision was".

On page 107, line 18, after the word "award" insert "only".

On page 107, line 25, strike out the closing quotation mark and the final period.

On page 107, after line 25, insert the following:

"(h) The President shall promulgate regulations in accordance with chapter 5 of title 5, United States Code, commonly known as the Administrative Procedure Act, establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which judicial review of the response actions will be based. For remedial actions, such regulations shall include procedures for providing, before adoption of any plan for remedial action to be undertaken by the United States or a State or any other person under section 104 or section 106 of this Act—

"(1) notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered;

"(2) a reasonable opportunity to comment and provide information regarding the plan;

"(3) an opportunity for a public meeting in the affected area;

"(4) a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under such procedures; and

"(5) agency support for the basis and purpose of the selected action.

The administrative record shall include the items developed and received pursuant to the procedures established under this subsection.".

On page 108, strike out lines 1 through 3, and insert in lieu thereof the following:

(c) Section 106(b) of such Act is amended by—

(1) inserting "(1)" after "(b)";

(2) striking out "who willfully" and inserting in lieu thereof "who, without sufficient cause, willfully"; and

(3) adding at the end thereof the following new paragraph:

On page 108, line 25, beginning with "issuing" strike out through "capricious or" on line 1, page 109, and insert in lieu thereof "selecting the response action ordered was not reasonably justified under the criteria set forth in the national contingency plan, including the requirement for cost effectiveness of such action, or was".

On page 109, line 2, strike out "may" and insert in lieu thereof "shall".

On page 109, line 4, strike out "arbitrary and capricious or" and insert in lieu thereof "not reasonably justified under the criteria set forth in the national contingency plan, including the requirement for cost effectiveness of such action, or was".

Mr. STAFFORD. Mr. President, on behalf of myself and the chairman of the Committee on Judiciary, Senator THURMOND, I am offering a series of amendments designed to clarify and improve upon provisions contained in S. 51 as reported from the Committee on Environment and Public Works.

In my opening statement, I alluded to the fact that S. 51 was considered by three committees of the Senate. One of those three was the Committee on Judiciary, to which the bill was referred on a time-limited basis. Although the committee itself did not have sufficient time to develop any formal amendments to S. 51 prior to the expiration of the 15-day referral, Senator THURMOND, myself, and other interested Members continued to work together and with the administration to improve S. 51 in a number of areas. The result is a number of amendments cosponsored by several members of the Judiciary Committee which I believe deserve the support of the full Senate. These amendments are as follows:

CONTRIBUTION AND PARTIES TO LITIGATION

This amendment removes any doubt as to the right of contribution on the part of any person involved in an action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980: those potentially liable under CERCLA; those held liable in a suit by EPA, a State or a private party under CERCLA; or, those who settle with EPA, the State or a private party. The amendment is necessary because the Supreme Court, in recent decisions, has refused to imply a right of contribution under other statutes unless expressly stated. These decisions could create doubt regarding the existence of a right of contribution under the Comprehensive Environmental Response, Compensation, and Liability Act, despite several recent district court cases correctly confirming that we intended the law to confer such a right.

S. 51, as reported by the Environment and Public Works Committee, could have been read to preclude joinder of third-party defendants to the enforcement case in chief. While trial of contribution issues may be delayed to assure prompt and effective response, any defendant in a Government enforcement action under CERCLA nevertheless should be entitled to file a claim for contribution against others, including defendants and third-party defendants, as soon as the enforcement action has been brought. Such private party actions should encourage additional parties to come forward and join in settlement discussions with the Government.

The amendment permits the timing and procedure for such contribution claims to be governed by the Federal Rules of Civil Procedure. As a general rule, private party cleanup will occur more quickly if the courts first resolve issues of liability and remedies concerning the original defendants, leaving questions of apportionment until after the Government's action has been completed. Nonetheless, consistent with the Federal Rules of Civil Procedure, these decisions are left to the discretion of the court.

In terms of encouraging prompt and effective action, an important provision of S. 51 is the proposal to add a new paragraph 107(1)(3) to provide contribution protection to parties who settle with the United States or a State in good faith. The proposed new paragraph provides that, where a party has entered into a judicially approved good faith settlement with the United States or a State, no other responsible or potentially responsible party may seek contribution from the settling party. This protection attaches only to matters that the settling party has resolved with the United States or a State.

Thus, in cases of partial settlements where, for example, a party has settled with the United States or a State for a surface cleanup, the settling party shall not be subject to any contribution claim for the surface cleanup by any party. The settlor may, however, remain liable in such instances for other cleanup action or costs not addressed by the settlement such as, in this example, a subsurface cleanup.

Also, where the United States or a State has secured a partial settlement, it may seek relief for any of the remaining response action or costs for which the nonsettlors are liable. Similarly, a settlor may also maintain a contribution action against nonsettlors regarding the portion of the response action or costs to which the settlor has agreed.

There is also one technical change to avoid confusion. S. 51 expressly provides in section 126(1)(3) that the nonsettlor's liability to the United States or a State will be reduced by the amount of settlement. Therefore it is unnecessary to repeat the phrase "for the remainder of the relief sought," in section 126(4). To do so would be redundant and, therefore, surplusage.

The United States rights under this section are not superior to the rights of the States. Accordingly, section 126(4) is revised to provide that neither the rights of the United States nor the rights of a State under this section are superior to the other.

PREENFORCEMENT REVIEW

As reported by the Committee on Environment and Public Works, section 133 of S. 51 provides that the United States or a State is entitled to recover Government response costs under section 107 of CERCLA unless a court determines that the response action was arbitrary, capricious, or otherwise not in accordance with law. Similarly, the reported bill provides that a party who has undertaken a response action pursuant to an order issued by the Administrator of the Environmental Protection Agency under section 106 of CERCLA may obtain reimbursement from the fund for that portion of the required response action that a court later determines was arbitrary and capricious.

The cosponsors believe that courts should engage in a searching and careful review of Government response actions and administrative orders. Such review should occur both where the Government is seeking to secure a response through an injunction or to recover its costs of response, and where a party who has complied with an administrative order under section 106 is suing for reimbursement from the fund.

To ensure a searching and careful review of Government response actions and orders, the following standard of review should be substituted for the arbitrary and capricious standard set forth in S. 51.

This standard confirms that response actions will be explicitly tested under the criteria set forth in the national contingency plan [NCP], including but not limited to a requirement that the selected action be cost effective. The cosponsors understand that, in accordance with section 105(7) of CERCLA, the NCP must include a means of "assuring that remedial action measures are cost effective," and that the NCP so provides.

However, it is intended that a court review not only the means of assuring cost effectiveness but, in fact, whether the action selected was reasonably justified as cost effective.

Cost effectiveness also must be considered when the Government undertakes an action as contemplated in section 108 of S. 51 which provides that the President may continue a response action where such response action "is appropriate and consistent with permanent remedy."

Government response action, including actions contained in an administrative order issued under section 106, will not be upheld to the extent that an objecting party can demonstrate, on the administrative record, that the response action or a portion thereof was not reasonably justified under the criteria set forth in the national contingency plan, specifically including the requirement that the selected cost be cost effective.

In cases where a response action or a portion thereof is found not to be reasonably justified under national contingency plan criteria, the Government will be able under section 106 to compel a party to undertake only those portions of a response action that are reasonably justified under the national contingency plan. Where the Government is seeking to recover response costs, it may recover only those costs which are similarly reasonably justified. Where a party is seeking reimbursement from the fund, the party may recover those costs that exceed the costs of response which are reasonably justified under the criteria in the national contingency plan. It is expected that courts will carefully scrutinize response actions under these criteria even if the response has been completed.

The proposed subsection 113(h) sets forth five procedural requirements that apply to remedial actions. The procedures are intended to assure that a sound basis is established for the choice of a remedial action and that interested parties have an opportunity to participate in and contribute to the process of selecting a remedy. The procedures, thus, are consistent with the principles which were reflected in the Regulatory Reform Act, S. 1080, which passed the Senate in the 97th Congress, 94 to 0.

The procedures specified are to be undertaken prior to commencement of the remedial response. The procedural requirements set forth in paragraphs 1 through 5 apply to remedial action only. The amendment will not hamper emergency removal actions. The President is, however, also directed to establish procedures that are appropriate for removal actions.

Paragraph (1) specifies the minimum amount of information which is to be provided to the public regarding a proposed remedial response action. The provision is intended to require the President to give the public a clearer idea of the problem the proposed action addresses, of the contemplated provisions of the proposed remedial response, and of how the remedial response will remedy the identified problem.

The brief analysis of the plan selected and alternative plans considered should identify anticipated benefits of each alternative. The analysis should consider, as provided for under the NCP, the extent to which the benefits of a proposed plan can be achieved through alternative means and should evaluate, in accordance with the NCP, the costs associated with the use of such alternative means including potential adverse effects on public health or welfare.

Paragraph (2) requires the President to provide a reasonable opportunity to comment and provide information regarding the plan. In addition to the issues raised in the initial notice, additional issues and alternative proposals may be identified in comments on the proposed action.

If the President decides to make substantial changes in the proposed action, however, such as by adopting a significantly different approach recommended in comments or subsequently developed by the President, or by changing the focus of the remedial response action, a notice describing these changes and providing the necessary supporting information and analysis would be required.

For public comment and judicial review to be meaningful, it is important that the President include in the file all verified data and remedial alternatives as soon as practicable. Once the response action alternatives have been selected for evaluation in a feasibility study, a description of these alternatives should be included in the file.

Because of the complexity involved with selecting a remedy, the public and potentially liable parties must be able to obtain this verified data once it is available so that they can analyze its validity and suffiency and, if necessary, perform their own modelling and analysis.

Paragraph (3) requires that the President provide an opportunity for a public meeting in the affected area. The public meeting is for the purpose of providing information and comment in oral and/or written form.

Paragraph (4) requires the President to respond to each of the significant comments, criticisms and new data submitted in written or oral presentations under such procedure.

Paragraph (5) together with paragraph (4) require the President to articulate carefully and fully the basis and purpose of the selected action grounded upon the remedial action file as constituted on the date of the final selection of the remedial action. The President is required to articulate the reasons behind the selection as well as the factual and policy bases for it.

The words "agency support" are intended to require that the data or materials in the record on which the President based his factual determinations must be reliable and credible even though they do not necessarily satisfy the rules of evidence applied in judicial proceedings.

Public procedure will be provided prior to the remedial response being taken. The procedural requirements set forth in paragraphs 1 through 5 apply to remedial actions only. We do not intend to hamper removal actions, however, the President, under this section is also directed to establish procedures that are appropriate for removal action.

Although there will be a period while these regulations are being developed, CERCLA cleanup must nevertheless continue without delay. Accordingly, during the interim period while such regulations are being promulgated, judicial review would be on the administrative record that has been assembled. Where major deficiencies are demonstrated and found by a court to exist in the administrative record that has been assembled, existing administrative law principles will govern whether supplementary materials explaining or clarifying the record may be introduced at trial.

The amendment to section 1096(b) states in part:

> Any person who without sufficient cause willfully violates, or fails or refuses to comply with, any order of the PRESIDENT under subsection (a) may . . .

There is concern that by limiting the timing of review of section 106 orders, that a potential due process question may arise under the holding in *Ex parte Young,* 209 U.S. 123 (1908). Accordingly, in an attempt to avoid any due process problem, section 106(b) should be further amended to include a good faith defense to liability for penalties under that section. Therefore, our amendment would insert the phrase "without sufficient cause" between "who" and "willfully" in section 106(b). Because the phrase "without sufficient cause" is currently in section 107(c)(3) it has been reviewed and construed by the courts, which have held it to mean that a party will not be liable for treble damages for failing to comply with an EPA order where the party has a reasonable good faith belief that it had a valid defense to that order. See *U.S.* v. *Reilly Tar and Chemical Corp.*, 606 F. Supp. 412, et al. (D. Minn. 1985); *Wagner Electric Corp., et al.* v. *Lee Thomas* (D. Kan.) (June 20, 1985). These courts have correctly relied on the statements of this Senator in 1980 during floor consideration of Superfund.

It is the intent of the sponsors to confirm that a good faith defense exists under section 107(c)(3) and to extend that defense to the penalty provision in section 106(b). Consistent with the Reilly Tar and Wagner Electric decisions, we believe that the phrase "sufficient cause" will continue to encompass a "good faith defense" to liability where a person can establish that it has a reasonable belief that it was not a responsible person under the Act or that the required response action was inconsistent with the NCP. The court is expected to base its assessment of the defendant's good faith belief on the objective evidence as to the reasonableness of that belief.

In addition, the courts are to continue to construe the phrase "without sufficient cause" to encompass other situations where the equities require that no penalty or treble damages be assessed.

The sponsors do not believe nor do we intend for parties to place unreasonable reliance on this confirmation and extension of the "good faith" defense. We recognize the importance of EPA orders to the success of the CERCLA program. Therefore, it is expected that courts will carefully scrutinize assertions of "sufficient cause" and will accept such a defense only where a party can establish by objective evidence the reasonableness of a good faith challenge to an EPA order.

JUDICIAL REVIEW

The purpose of this technical amendment to S. 51 is to place the random selection procedure for selection of an appropriate court of appeals in multicourt failing situations with the multidistrict litigation panel authorized by section 28 U.S.C. 1407, rather than the Administrative Office of the United States Courts. This conforms with the position of the judicial conference. This is also the approach adopted in H.R. 439 as recently passed by the House and presently pending in the Senate Committee on Judiciary.

In addition to Senator THURMOND and myself, these amendments are sponsored by several other Senators, many of whom are Members of one or the other of the two committees. They are Senators HATCH, EAST, MCCONNELL, LAXALT, DECONCINI, SIMPSON, DENTON, SPECTER, HEFLIN, MATHIAS, and GRASSLEY.

At this point, Mr. President, I yield to my distinguished colleague from South Carolina.

Mr. THURMOND. Mr. President, I thank the able Senator, the chairman of the Committee on Environment and Public Works for accepting these amendments. These amendments are not technical. They go to the merits.

Mr. President, I support the package of amendments offered by the distinguished chairman of the Environment and Public Works Committee. The able chairman of the Public Works Committee [Mr. STAFFORD]) is to be commended for his excellent work on the Superfund bill and his fine cooperation with the Committee on the Judiciary by arranging for the acceptance of a package of amendments and accompanying explanatory text which originated in the Judiciary Committee. I wish to also commend the able ranking member [Mr. BENTSEN], for his splendid work on this legislation.

The Committee on the Judiciary received unanimous consent for a sequential referral of S. 51 in order to review certain provisions of the bill that were within the jurisdiction of the committee. As we stated in our referral request, our review of the bill was intended to ensure its workability and compatibility within our Federal court system.

In order to avoid delay, and based upon the assurance that the "Federal Cause of Action" language would not be part of this bill, the committee agreed to narrow the scope of its review and the length of the referral.

In the 18 days that the Committee on the Judiciary had the bill, we held 2 days of hearings. The hearings explored many aspects of the Superfund Program, such as contractor liability, citizen suits, and others, that had not previously been examined by the committee. Expert witnesses from the administration, as well as from the business and the environmental communities, appeared before the committee to discuss S. 51 and the Superfund Program.

As a result of these hearing, I met with officials from the Environmental Protection Agency and the Department of Justice to formulate an amendment package to address several of the key issues which had surfaced during the Judiciary Committee review of this bill. Once we were able to agree on the language for the amendments and the language to be used in the explanatory statement—and Mr. President, I can assure my colleagues that each word was painstakingly selected—I sought cosponsorship from the other members of the Judiciary Committee. Ten members of the committee—a majority of the committee—joined together to support what came to be known as the Thurmond-EPA-DOJ package. Next, I took this package to Senator STAFFORD, and he graciously agreed to offer this package on the Senate floor and have these provisions included in the bill that is sent to the President. The explanatory statement which Senator STAFFORD has incorporated as part of his statement fully explains our proposal. However, I would like to add a brief summary of what we accomplish with these amendments.

One issue addressed by these amendments is the right to contribution; that is, the right of one defendant to pursue reimbursement from codefendants. All of the expert witnesses appearing before the committee agreed that the right to contribution should be codified in order to encourage responsible parties to engage in cleanup and settlement. The committee proposal would codify that right and, retaining current law, would allow a judge the discretion and flexibility to best manage the contribution issues in a law suit.

The amendment package also addresses the preenforcement review provisions of S. 51. Here, our language represents a delicate balance between the desire to begin cleanups immediately and the need to provide a fair and meaningful review of agency actions.

Under S. 51, as reported by the Public Works Committee, review of agency decisions would only be allowed after cleanup is completed or a financial liability has been incurred. Then the standard of review of the agency action would be whether such action was "arbitrary and capricious." When these requirements are considered in the context of a lenghty and expensive site cleanup, a potentially responsible party may be denied a meaningful opportunity to challenge a possible unreasonable agency action.

The Environmental Protection Agency was concerned that allowing judicial challenges to agency decisions before the remedial action had begun could substantially delay needed cleanups. We recognize this concern and, therefore, this amendment does not alter the timing for such judicial challenges. We have, however, changed the judicial review standard in order to ensure a full and fair opportunity to challenge the reasonableness of agency actions.

The amendment would require that the agency create a complete administrative record to be used as the basis for its selection of a remedy and upon which a court can base its review. The amendment also changes the standard of review from "arbitrary and capricious" to whether the remedy is "reasonably justified" under the criteria of the EPA's national contingency plan.

In rejecting the old standard, as is appropriate in the context of delayed judicial review, we believe courts should be encouraged to engage in a searching and careful review of government response actions and administrative orders. This approach encourages everyone to proceed with a cleanup, while protecting parties from unreasonable governmental actions.

In an attempt to avoid a possible constitutional problem, section 106 is amended to include a good-faith defense to penalties under that section. Our proposal would provide a defense to these damages by allowing a defendant to make a good-faith showing that he reasonably believed that he would not be liable under the act or that the required response action was inconsistent with the national contingency plan. This addition codifies the leading court decisions in this area.

It is the belief of a majority of the Judiciary Committee that the package of amendments provides for significant improvement of S. 51 by striking a fair and equitable balance between the need to quickly cleanup toxic waste sites and the need to preserve due process and the integrity of our judicial system. These amendments are intended to make our cleanup program more effective.

It is my hope that this body will unanimously adopt these amendments in the form they are now being offered by the distinguished manager of the bill.

● Mr. DECONCINI. Mr. President, I am happy to cosponsor the amendments to sections 126, 132, and 133 offered by the distinguished chairman of the Judiciary Committee. In my view, these amendments strike the right balance between the need for rapid cleanup of hazardous waste sites across the Nation, and the need for potentially liable parties and the general public to receive a full and fair review of their concerns.

As it is worded in S. 51, section 126 would codify the right of private parties who are held liable under the Superfund law to seek contribution from other potentially liable parties, but it would postpone this contribution action until after a judgment had been entered or a good-faith settlement has been reached in the initial case. This postponement seems extraordinarily unfair to these other parties, who will be expected to pay their share of the cleanup cost, but were not involved in the case at the time when liability was established or the costs of cleanup determined.

Our amendment would overcome this problem by stating simply that any person may seek contribution from any other liable or potentially liable person, and that such claims will be brought in accordance with the Federal Rules of Civil Procedure. This approach gives the court the discretion to structure the case in whatever manner will result in a fair and equitable resolution of the issues involved.

Our amendment to section 133 would continue the language in S. 51 that states that cleanup actions or orders are subject to judicial review only at the time that the Government seeks to recover its costs or attempts to enforce an order and collect penalties for failure to comply. I believe that this language is essential if we are to avoid unnecessary delays in carrying out Superfund cleanup. At the same time, it is important to assure that the rights of the potentially responsible parties are protected.

Our amendment would spell out the contents of the administrative record which the Government must compile before undertaking any response action over and above an emergency or short-term cleanup. This will assure that the decision about the appropriate type of response will be open to public scrutiny. In addition, our amendment would specify that the Government's selection of a response will be upheld unless it can be demonstrated, on the basis of the administrative record, that the decision was not reasonably justified under the criteria in EPA's national contingency plan, including the cost-effectiveness of the response action. In my view, this is a more reasonable standard of judicial review than the "arbitrary and capricious" requirement in the original language.

Mr. President, these amendments are supported by a bipartisan majority of the Judiciary Committee. We believe that they are necessary to resolve several outstanding judicial issues and to permit EPA, the States, and the potentially responsible parties to get on with the cleanup of the Nation's hazardous waste sites. I urge my colleagues to support these amendments.●

Mr. GRASSLEY. Mr. President, I am pleased to speak in support of the package of amendments offered by Senators THURMOND and STAFFORD on the contribution and review provisions of S. 51. This package represents the tireless efforts of those Senators and their staffs in reaching a consensus on matters before the Judiciary Committee.

I had intended to offer amendments 642 and 643, as printed at page S. 11810 of the September 19 CONGRESSIONAL RECORD, to the Thurmond-Stafford amendments. But now that Senator STAFFORD has very graciously agreed to certain legislative history language that I offered on subsection 113(h) of the package, there is no need for those amendments.

I especially want to express my deepest personal appreciation to both Senator THURMOND and Senator STAFFORD for their leadership in reaching an agreement on this explanatory language.

The Thurmond-Stafford amendment regarding preenforcement review elaborates the administrative requirements which are needed to ensure a uniform process for the participation of potentially responsible parties and the public in the President's selection of cleanup actions under the Superfund law.

These amendments will not hamper the EPA's ability to conduct emergency cleanup actions, so-called removal actions, but EPA must establish regular procedures which are appropriate to its decisionmaking regarding such actions which it must then follow-

In the nonemergency situation, where the President contemplates the need for longer term and more expensive cleanup action, so-called remedial actions, or where the decision is made to go beyond the 1 year or $2 million limitation on removal actions established by S. 51, this amendment specifies minimal procedural protections.

The President must provide for timely and meaningful public and potentially responsible party participation in the remedial action administrative process. The amendment is intended, moreover, to assure that the requirements of constitutional due process, including the opportunity for a meaningful administrative hearing, are met under the Superfund law. See, *Wagner Electric Corp.* v. *Thomas*, 22 ERC 2079 (D. Kans. June 20, 1985); *Industrial Park Development Corp.* v. *EPA*, 22 ERC 1593 (E.D. Pa. 1985).

The standard of judicial review in the Thurmond-Stafford amendment requires that the President, which means EPA so long as the President uses that agency to administer the Superfund Program, reasonably justify in the administrative record the proposed cleanup action, including the cost-effectiveness of such action. The description of the amendments which Senator STAFFORD has included at my suggestion, makes explicit the kind of analysis which would be required, including identification of anticipated benefits and costs.

The Thurmond-Stafford amendment is needed to affirm the continuing vitality of the Administrative Procedure Act, as clarified by that act's elaboration in S. 1080, in the context of Superfund actions. See Senate Report 97-284, 97th Congress, 1st session (1981). When EPA learns that it, like other agencies, must live under a government of laws, not men, we can expect to see the more effective and efficient administrative decisionmaking which our citizens have a right to expect. "Due process of law" must never become "trust the bureaucrats."

Closer judicial scrutiny of statutory authority under Superfund and response actions under the "reasonably justified" scope of review, will be healthy. "Congress defaulted when it left it up to an agency to do what the 'public interest' indicated should be done." W. Douglas, "Go East Young Man" 217 (1974). See J. Skelly Wright, Book Review, 81 Yale L.J. 575 (1972). Indeed, as one critic of agency behavior put it, likening agencies unconstrained by statutes to Plato's philosopher-king:

> [O]ur whole constitutional structure has been erected upon the assumption that the king not only is capable of doing wrong, but also is more likely to do wrong than other men if he is left unrestrained. We must not today judge those in possession of governmental power more favorably than did our ancestors, with the presumption that they can do no wrong. On the contrary, if there is any presumption, it should be against the holders of power, and increasing as the power increases. In the field of administrative law, historic responsibility can never make up for the want of legal responsibility. S. Rep. No. 97-284, 97th Cong., 1st Sess. (1981), quoting Schwartz, "Of Administrators and Philosopher-Kings: the Republic, the Laws, and Delegations of Power," 72 Nw.U.L.Rev. 443, 450 (1977).

Mr. BENTSEN. Mr. President, if the distinguished chairman will yield, I will say we have examined these amendments in detail and see no problem. We congratulate the chairman and his committee for their contribution.

Mr. THURMOND. I thank the Senator. I extend my thanks to the chairman's splendid staff for their cooperation in this matter.

Mr. STAFFORD. Mr. President, there may be a minor correction to be made.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 664 TO AMENDMENT NO. 663

Mr. STAFFORD. Mr. President, I send an unprinted amendment to the desk as a second-degree amendment to the Thurmond amendment. I ask unanimous consent that I may do so. I am offering this amendment on behalf of Mr. SPECTER. I ask unanimous consent that it may be considered as a second-degree amendment at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. THURMOND. Mr. President, as I understand, this is amending my amendment. I have no objection.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Vermont [Mr. STAFFORD], for Mr. SPECTER, proposes an amendment numbered 664 to amendment No. 663.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 1, line 8, after "Federal laws" insert the following: "In resolving contribution claims, the court shall allocate response costs among liable parties, using such equitable factors as the court determines are appropriate.".

Mr. BENTSEN. Mr. President, we have no objection to that amendment.

Mr. STAFFORD. Mr. President, I know of no further speakers. I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment.

The amendment (No. 664) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I know of no further speakers on this side. I move adoption of the amendment, as amended.

The PRESIDING OFFICER. The question is on agreeding to the amendment, as amended.

The amendment (No. 663), as amended, was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I yield the floor to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I again want to thank the able chairman of the committee and the able ranking member for their cooperation.

Mr. President, I want to say that some of the staff members worked unusually hard on these amendments. On my staff, Diana Waterman, Mike Wooten, and Dennis Shedd worked for weeks and weeks to try to get the Environmental Protection Agency and the Justice Department together. They finally did that and as a result, we are here today to cooperate on these amendments and see them adopted. I am very pleased that the Senate has adopted them.

Mr. President, I would like to take this opportunity to commend those who have worked so diligently in preparing the amendments. Much credit is due to Mr. Lee Thomas, Administrator of the Environmental Protection Agency; Hank Habicht, Assistant Attorney General for the Lands and Natural Resources Division at the Department of Justice, and their able staffs: Nancy Firestone and Anne Shields of the Department of Justice and Linda Fisher and Gene Lucero of the Environmental Protection Agency. It was their technical expertise and generous assistance that enabled us to fashion this amendment package.

I also thank the members of the staff of Senator STAFFORD, Mr. Moore and Miss Cudlipp, for their fine cooperation.

Mr. STAFFORD. Mr. President, I want the Senator from South Carolina to know how much I have enjoyed the opportunity to work with him and members of his staff in putting together the series of amendments we have just adopted. It has been a great pleasure and I know we shall be able to cooperate in that way in the future.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 665

Mr. BENTSEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Texas [Mr. BENTSEN] for himself and Mr. STAFFORD, proposes an amendment numbered 665.

Mr. BENTSEN. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 88, beginning on line 16, strike all through page 89, line 3.

On page 118, after line 8, insert the following new section and renumber succeeding sections accordingly:

CONTRACTOR INDEMNIFICATION

SEC. . Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding following new section:

"INDEMNIFICATION OF CONTRACTORS

"Sec. . (a)(1) The President shall, in contracting, or arranging for response action to be undertaken pursuant to contracts or cooperative agreements in accordance with section 104(d)(1) of this Act, and funded in accordance with section 111 of this Act, agree to hold harmless and indemnify a contracting or subcontracting party against claims, including the expenses of litigation or settlement, by third persons for death, bodily injury or loss of or damage to property arising out of performance of a cleanup agreement to the extent not covered by available insurance and to the extent that any such damages awarded do not arise out of the negligence, recklessness, or intentional misconduct of the contracting or subcontracting party.

"(2) The President may, in the President's discretion, agree to hold harmless and indemnify a contracting or subcontracting party against such claims to the extent not covered by available insurance and to the extent that any such damages awarded do not arise out of the gross negligence, recklessness, or intentional misconduct of the contracting or subcontracting party, so long as such indemnification is in the public interest.

"(b)(1) Amounts expended pursuant to this section shall be considered costs of response to the release with respect to which resulted in liability. Costs incurred in the defense of suits agains indemnified parties under subsection (a)(1) may be paid to such contractor in a timely manner, in quarterly or other increments, unless and until such contracting or subcontracting party is proven negligent in a court or such contractor accepts liability for negligent action. The United States shall not otherwise participate, directly or indirectly, in the defense of contracting parties unless the

United States is named as a first party defendant. No other amounts shall be expended pursuant to this section until after entry of a judgment or a final order.

"(2) Indemnification contracts entered into pursuant to this section shall not be subject to section 1301 or 1340 of title 31 or section 11 of title 41 of the United States Code.".

On page 48, after line 3, insert the following new section and renumber succeeding sections accordingly:

"RESPONSE ACTION CONTRACTORS

"SEC. . Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subparagraph:

"( ) In the case of any person carrying out a written contract or agreement with any Federal agency, or any State (or any political subdivision thereof), or any responsible party to provide any response action or any services or equipment ancillary to such response action,

"(i) the term 'owner or operator' does not include any such person, and

"(ii) any such person shall not be considered to have caused or contributed to any release or to have arranged for disposal, treatment, or transport of hazardous substances, except to the extent that there is a release of a hazardous substance that was primarily caused by activities of such person. This subparagraph shall not apply to any person potentially responsible under section 106 or 107 other than those persons associated solely with the provision of response action or ancillary services or equipment;".

Mr. BENTSEN. Mr. President, what I am offering on behalf of myself and the distinguished chairman of this committee is an amendment that would alleviate some of the problems faced by contractors who are cleaning up our Superfund sites. As we all know, environmental insurance for any activity involving hazardous substances, such as those found on Superfund sites, is becoming increasingly difficult to obtain. This is especially true for those whose business it is to tackle the difficult job of cleaning up areas where there have been uncontrolled releases of hazardous substances.

The result is that a lot of these businesses just will not tackle that job and it cuts way down on the number of contractors we can find that will engage in taking care of this problem.

In an Environment and Public Works Committee hearing held last March on this issue, we heard testimony from "response action contractors" who are finding that the evaporation of insurance may make it impossible for them to remain in this line of work. I think all of us can agree that the Superfund program is, in part, dependent upon the willingness of contractors to remain in the cleanup business.

In response to these concerns, I, along with Senator STAFFORD, introduced an amendment to S. 51 2 months ago that addressed several needs of the response action contractors by requiring the Administrator of the Environmental Protection Agency to indemnify these contractors involved in cleanups at federally funded sites for their nonnegligent action.

More recently, the contractors indicate that the situation has deteriorated so rapidly that more protection is needed. In some cases, they have sought virtual immunity from third party liability for their actions plus a limitation on any residual liability that Congress had not addressed. I am sympathetic to their situation, but believe less dramatic measures can be used to effectively address this recent development. Let us be clear on one point: all of us want to see cleanup of Superfund sites continue unimpeded by the absence of insurance for response action contractors.

Today, the amendment we are offering responds to the contractor's environmental insurance problem in several ways. First, in addition to mandatory indemnification for non-negligent acts, the Administrator is given the discretion to indemnify contractors for their negligent actions if, in the judgment of the Administrator, such a level of indemnification is in the public interest. These discretionary indemnifications would be negotiated at the time of the activity such that a contractor would have certain knowledge that he would be protected. Second, I have clarified that the Administrator should make indemnification payments to such contractors in a timely manner unless and until a court finds the contractor to have been negligent, so that contractors will not face the problem of affording legal counsel while the dispute is pending. This modification also addresses concerns that the EPA might choose on its own to declare a contractor has been negligent and refuse to indemnify that contractor.

Last of all, I have clarified the definition of what constitutes a "response action contractor" and excluded them from the parties that would otherwise be liable under this law. This exclusion from liability under Superfund does not apply where the release of a hazardous substance is primarily caused by the activities of the contractor. These situations could be covered by indemnification or coverage provided by risk retention pools, however. Similarly, a person who is already a potentially responsible party would not be relieved of its liability by becoming a response action contractor.

These provisions will protect contractors from unusual financial exposure due to the unavailability of environmental insurance. At the same time, it prohibits potentially responsible parties from evading liability by developing response action capability of the corporation.

I also observe that the Risk Retention amendment adopted earlier—yesterday—by the Senate could serve to address some of the insurance problems faced by these contractors.

Mr. DECONCINI. Mr. President, I wish to express my appreciation to the distinguished floor managers for their patience and fortitude in the formulation of this amendment. Response action contractors need and deserve protection from the extraordinary risks associated with the cleanup of hazardous waste sites under Superfund. These engineers and construction firms did not contribute in any way to the generation or dumping of these hazardous wastes. Yet, they are being asked to perform inherently dangerous work without the necessary insurance to protect them against the liability of future cleanup costs under Superfund and against third-party liability under various State laws.

Over the past few months, I have been hearing from some of the largest and most respected engineering and contracting firms and organizations in the Nation. They are concerned about their inability to obtain pollution liability insurance. In addition, they are concerned about being subject to the strict, joint and several liability requirements of Superfund, despite exercising due care and performing satisfactorily on their contract obligations. I've also heard from the Environmental Protection Agency and members of the American Bar Association who are specialists in public contract law. All of these people are concerned that the lack of insurance coverage will prevent the most competent, responsible professionals from participating in Superfund cleanup activities.

It is important to understand that the principal risk covered by liability insurance is that of defending against claims alleging negligence and satisfying such claims if negligence is proven. The amendment under consideration would authorize the President to indemnify response action contractors and subcontractors against any liability arising out of the contractor's performance which was not the result of gross negligence, recklessness or intentional misconduct on the part of the contractor, and to the extent that insurance was not available.

As the floor managers are aware, it had been my intention to offer a somewhat more far-reaching amendment than the one now under consideration. However, I am pursuaded by those most affected, including both the contracting organizations and EPA, that the amendment offered by the distinguished floor managers represents a major step forward and provides a solid basis for further consideration of this important issue. I appreciate the willingness of the staff of the Environment and Public Works Committee to work with my staff in arriving at the indemnification proposal now before us, and I support the results that have been achieved.

Mr. STAFFORD. Mr. President, I compliment my friend and collaborator and comanager [Mr. BENTSEN] on the statement he just made with respect to the amendment which he and I are jointly offering. I think he stated the problem and stated the only response to it that is open to us at this time. I join him in urging the Senate to act. For the majority, I am prepared to do just that.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

Mr. THURMOND. Mr. President, we think it is a good amendment and we are very pleased to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 665) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I am informed that Senator PACKWOOD is en route to the Chamber to have a colloquy with Senator MCCONNELL. I think as far as the Environment and Public Works Committee is concerned, we have finished what we wanted to accomplish today.

That being the case, I suggest the absence of a quorum until Senator PACKWOOD arrives.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 666

Mr. BENTSEN. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN] proposes an amendment numbered 666.

Mr. BENTSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 109, after line 14, insert the following:

"(l) Any litigation relating to permits of the Administrator issued pursuant to the Clean Air Act, the Clean Water Act, the Solid Waste Disposal Act, the Toxic Substances Control Act, and this Act, and for which such permitted facilities would guarantee the availability of treatment, incineration, or disposal capacity of at least 25 per centum for Superfund wastes shall be afforded priority consideration over other civil litigation by the respective United States Court of Appeals having jurisdiction over the litigation. It shall be the duty of the Court of Appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the extent possible the disposition of any matter covered by this subsection."

Mr. BENTSEN. Mr. President, the amendment I am offering is a simple one that encourages the courts to expedite appeals on permits relating to facilities seeking to treat hazardous waste, such as that found at Superfund sites. This amendment addresses a growing problem in the area of hazardous waste. The 1985 Superfund amendments seek to eliminate any preference given to land disposal of hazardous wastes. As a result, more Superfund sites will be cleaned up by reliance on treatment technologies designed to affect the hazardous nature of the waste. This is a field of endeavor we hope more reputable firms will consider participating in, so we can try to reduce the amount of hazardous waste we have.

Unfortunately, those interested in entering this market will spend years getting a permit and potentially several more years of litigation over that permit. It is the permit appeals process that my amendment addresses. This proposal simply asks the Federal courts with jurisdiction over these cases to do what they can to expedite these cases over other civil litigation. Such expedited procedures provisions are not uncommon. This provision reflects the needs of the Nation to effectively attack its hazardous waste problems and to remove disincentives to entering the waste disposal field.

Mr. STAFFORD. Mr. President, on this side we have examined the amendment of Senator BENTSEN. We find it to be agreeable, and we are prepared to accept it.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, we are willing to go along with the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 666) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BENTSEN. Mr. President, I thank the distinguished chairman of the Judiciary Committee for his thoughtful consideration of this amendment and his cooperation.

Mr. THURMOND. Mr. President, it

is a pleasure to cooperate with the able Senator.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 667

(Purpose: To provide that certain expenses of a private foundation in removing hazardous substances shall be treated as qualifying distributions for purposes of section 4942 of the Internal Revenue Code of 1954)

Mr. PACKWOOD. Mr. President, I believe the Senator from Kentucky has an amendment to offer. I will have just a few words to say about it. I believe it is acceptable.

Mr. McCONNELL. Mr. President, I send an amendment to the desk for myself and Senator FORD and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for himself and Mr. FORD, proposes an amendment numbered 667.

Mr. McCONNELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title II, insert the following new section:

SEC. —. CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTIONS.

(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by request before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

Mr. McCONNELL. Mr. President, the amendment I am offering today with my colleague from Kentucky will encourage the voluntary cleanup of a hazardous waste site by the Louisville-based Brown Foundation, while also ensuring that the Foundation can continue its generous charitable contributions over the long term.

The James Graham Brown Foundation is a tax-exempt, non-profit corporation which has donated in excess of $68 million to charitable causes since 1954. In 1969, the founder bequeathed the foundation a wood preserving company which included three operating plants in Live Oak FL; Brownsville, AL; and Louisville, KY. All of the assets of the plants were liquidated between 1969-80.

In 1983, the foundation was advised by EPA that prior operations at the Live Oak, FL plant may have resulted in the discharge of hazardous substances, specifically the creosote used in preserving the wood. Following notification, the foundation entered into a voluntary consent order with EPA and the State of Florida to investigate the extent of the pollution and possible cleanup actions at the Live Oak plant. In addition, the foundation voluntarily began investigations of potential pollution at the two other sites located in Alabama and Kentucky. The studies are still under way and the foundation anticipates that it will pay its fair share of any necessary cleanup activities.

At this time actual cleanup cost at the three plants are not known; but, based on EPA's prior experience, I understand the costs could be in the range of $20 to $100 million. By comparison, the assets of the foundation are in the range of $135 to $150 million. While it is the intention of the foundation to fulfill its responsbilities for cleanup, its assets must be preserved so that it can continue its many other charitable activities.

The problem, Mr. President, arises from the fact that section 4942 of the Internal Revenue Code requires the foundation to annually disburse charitable payments which are qualifying distributions equivalent to at least 5 percent of the fair market value of its assets. For the past few years, this has resulted in a requirement of $6 to $8 million in disbursements each year. The combination of this requirement and the potentially substantial cleanup costs could result in the foundation seriously depleting its corpus. This would not only threaten the foundation's ability to support worthy charitable activities in Kentucky and seven other States, but would also threaten the very existence of the foundation.

In order to prevent this dire possibility, our amendment provides that the cleanup expenditures sustained by the foundation will constitute "charitable payments" for the purposes of the qualifying distribution requirement of section 4942 of the IRC. Several points are relevant to this amendment:

It cannot be used by an entity to avoid Superfund obligations—it is narrowly drafted to apply to the factual situation and unique problem confronted by this particular foundation which will not recur.

It results in no loss of tax revenues to the U.S. Government. In fact, it encourages the voluntary cleanup being taken by the foundation and thereby saves the Government substantial Superfund expenditures and related administrative and legal costs. Furthermore, the foundation's voluntary actions will result in cleanup activity being accomplished more quickly and effectively than could be done by the Government.

Without this amendment, Mr. President, the foundation could be forced to sell assets in order to cover its cleanup costs and, in addition, still meet the IRS charitable disbursement requirements. This untimely forced sale will result in failure to recover the true value of these assets and will substantially reduce the income which would be available for future charitable gifts. The foundation has been an exemplary citizen in its voluntary approach to fulfilling its responsibilities. Neither it nor the charities which benefit from its generous giving should be punished by an inconsistent application of our Federal laws, and I urge adoption of the amendment.

Mr. FORD. Mr. President, I am pleased to be a cosponsor of the amendment by my colleague from Kentucky, Senator McCONNELL. The James Graham Brown Foundation, based in Louisville, KY, is a tax-exempt, nonprofit corporation which has generously donated more than $68 million to schools, hospitals, universities, and other charitable groups since its founding in 1954. This is a vital organization to Kentucky which has been the beneficiary of over 85 percent of these funds.

In 1969 the foundation was bequeathed the stock of a company which operated several wood treating plants, including one plant in Live Oak, FL. However, by 1980, the foundation had dissolved the wood treating company and liquidated its assets. Since that time the foundation has neither owned nor operated these businesses. In 1983, the Environmental Protection Agency notified the foundation that prior operations at the Live Oak plant may have resulted in the release of hazardous substances at the site, and consequently, the foundation, and another entity which also operated the site, could possibly have some liability under the Superfund Program.

While the foundation does not accept any of the findings of liability, being a responsible corporate entity, it does intend to pay its fair share of any necessary cleanup costs at the site and has entered into a voluntary consent order with EPA and the State of Florida to investigate the extent of any pollution and possible cleanup actions at the Live Oak site. Additionally, since learning of the potential problem at the Florida plant, the foundation had also voluntarily initiated investigations of the potential pollution problem at two other wood treating plants formerly operated by the company which bequeathed the stock to the foundation. This is a responsible foundation, Mr. President, and I stress that their action to date has been completely voluntary. The trustees of the foundation are men and women of impeccable integrity who fully intend to do their part to ensure that these sites are made safe.

However, at this time there is no clear estimate of the extent of the cleanup necessary at this site, nor of its potential cost. Based on past EPA experience, cleanup costs will no doubt be substantial. Unfortunately, if the cleanup costs are as great as expected, the foundation may be forced to sell its assets and liquidate the organization in order to voluntarily meet its responsibilities at these sites. Such a result would have a devastating impact on the many charitable organizations which the foundation supports, including the Boy Scouts, the YMCA, and many colleges and universities throughout Kentucky.

Under section 4942 of the Internal Revenue Code, a foundation is required to make charitable distributions annually equal to 5 percent of the average fair market value of its assets. In the case of the Brown Foundation, such qualifying distributions total between $6 and $8 million per year. The foundation simply will not be able to meet its fair share of the anticipated voluntary cleanup costs, and the 5-percent qualifying distribution requirement, without seriously depleting its corpus or forcing it to liquidate its assets. Obviously, if the corpus is sufficiently depleted, the foundation will cease to be able to fund the important charitable activities in my State, and throughout the Nation. At a time when this administration is calling on the private sector to pick up more and more of the cost of services to those in need, it seem to be most appropriate that the Congress provide some relief to this organization so that it can continue to meet the requirements of section 4942, and fund the many deserving organizations and groups it serves.

The foundation's voluntary cleanup activities are no different from the other charitable activities it supports in my State. Both activities provide for the general welfare and thereby lessen the need for government action and funding, while providing for the maintenance of public works. The voluntary cleanup activities by the foundation are no different than these required by section 4942 and should be recognized as such.

Our amendment is designed to allow the foundation to continue funding its charitable activities and meet its responsibilities to cleanup these sites. The amendment will allow the foundation to include in its 5 percent qualifying distribution funds, as required under section 4942, those amounts paid or incurred by the foundation for the investigatory costs and direct costs of removal or remedial action at the sites. This is a narrowly drafted amendment which applies only to the Brown Foundation and will not create a loophole by which other entities can avoid Superfund liability. More importantly, it encourages, and allows, voluntary cleanup actions to continue at the site, thereby saving the Federal Government substantial Superfund expenditures.

The Brown Foundation is an exemplary corporate citizen of Kentucky and should be allowed to voluntarily meet its cleanup responsibilities while at the same time continue its charitable activities. Congress did not intend to discourage such action through section 4942, and this amendment is appropriate and consistent with both the purposes of the Superfund program and the intent of the qualifying distribution rule of section 4942.

I am most appreciative of the support of the Finance Committee for this amendment and I urge its adoption.

Mr. PACKWOOD. Mr. President, this amendment has been cleared on both sides of the aisle. It is a relatively simple amendment. There is a foundation called the Brown Foundation which used to own some wood treatment plants. They have liquidated those plants. They may or may not have some Superfund liability. They are willing to do it. They are willing to pay for it. They are willing to undertake actions, whatever necessary, and do it voluntarily. They simply would like costs to be allocable against the 5 percent that foundations are required to pay each year out of their principal amount. I think it is a perfectly legitimate request, and I fully approve of the amendment.

Mr. BENTSEN. Mr. President, for the minority, we have examined what is being done and we find no objections to it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 667) was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, it is my understanding that we cannot stir up any more amendments that require rollcall votes this afternoon. I ask the manager of the bill if that is correct.

Mr. STAFFORD. I say to the majority leader that we know of no more amendments that might require rollcall votes.

We have been able to dispose of a large number of amendments today, and we think we are nearly at the end of the tunnel so far as the bill is concerned.

Mr. DOLE. I thank the distinguished chairman of the committee as well as Senator BENTSEN, Senator ROCKEFELLER, and others who have been working on this measure.

It is my hope that we can conclude action on this bill on Monday. I know that there are a couple of controversial amendments that we cannot deal with today because the principals are not here. I understand there is one more to be accepted without a rollcall vote.

I have been trying to stir up some more action this afternoon, but I cannot seem to find any. Everybody is waiting for a grain bill or a textile bill.

I think it is safe to announce to my colleagues that there will be no more votes today.

Mr. STAFFORD. Mr. President, I believe the most distinguished Senator from New York, a valued member of our committee, has an amendment.

AMENDMENT NO. 669

(Purpose: Alternative or Innovative Treatment Technology Research and Demonstration Program)

Mr. MOYNIHAN. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from New York [Mr. MOYNIHAN] for himself and Mr. LAUTENBERG proposes an amendment numbered 669.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 118, after line 8, insert the following new sections:

SEC. (a) Title I of the Comprehensive Environmental Response Compensation and Liability Act of 1980 is amended by adding the following new section:

ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH

"SEC. 119. (a)(1) The President is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies that may be utilized in response actions under section 104 or section 106 of this Act to achieve more permanent protection of the public health and welfare and the environment.

"(2) In carrying out the program established by this section, the President shall conduct a technology transfer program, including the development, collection, evaluation, coordination and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The President shall establish and maintain a central reference library for such information. The information maintained by the President shall be made available to the public.

"(3) In carrying out activities under subsection (1), the President is authorized to enter into contracts and cooperative agreements with, and make grants to, any persons including public entities, accredited institutions of higher learning, and nonprofit private entities (as defined by 26 U.S.C. 501(c)(3)). The President shall, to the maximum extent possible, enter into appropriate cost-sharing arrangements under this section.

"(b)(1) The President may, consistent with the provisions of this section, provide assistance or information to any persons, including public entities, accredited institutions of higher learning, and nonprofit private entities who wish to have alternative and innovative treatment technologies tested or evaluated for utilization in response activities.

"(2) The President may arrange for the use of sites, either wholly or in part, listed as national priority sites under section 105(a)(8)(B), or at which a response is taken pursuant to section 104 or 106, for the purposes of research, testing, evaluation, development, and demonstration under such terms and conditions as the President shall require to assure the protection of human health and the environment.

"(3) Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(c) To carry out the program authorized by this section, the President shall, within 2 years after the date of enactment of this section, and after notice and an opportunity for public comment, designate at least 10 sites listed under section 105(a)(8)(B) as appropriate for field demonstrations of alternative or innovative treatment technologies, after analyzing sites for potential response actions. If the President determines that 10 sites cannot be designated consistent with the criteria of this subsection, the President shall within the 2-year period report to the Environment and Public Works Committee of the Senate, and the Science and Technology Committee, the Energy and Commerce Committee, and the Public Works and Transportation Committee of the House of Representatives explaining the reasons for the failure to designate such sites. Other funding priorities shall not be deemed sufficient explanation under this subsection for failure to designate such sites. Not later than 12 months after designation of a site under this section, the President shall begin or cause to begin a demonstration of alternatives or innovative treatment technologies at such site. In designating such sites under this section, the President shall, consistent with the protection of human health and the environment, consider each of the following criteria:

"(1) The potential for contributing to solutions to those waste problems that pose the greatest threat to human health, which cannot be adequately controlled with present technologies, or which otherwise pose significant management difficulties.

"(2) The availability of technologies that have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(3) The suitability of the sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the sites, the capability to conduct demonstrations in such a manner as to assure the protection of human health and the environment, and the comments of the public.

"(4) The likelihood that the data to be generated from the demonstration at the site will be applicable to other sites.

"(d) In selecting alternative or innovative treatment technologies for use in response actions under this title, the President shall determine that response actions incorporating such technologies provide for cost-effective response if their life cycle cost does not exceed the life cycle of the most effective alternative by more than three hundred per centum.

"(e) For the purposes of this section, the term 'alternative or innovative treatment technologies' means those technologies that permanently alter the composition of hazardous waste through chemical, biological or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. This term also includes technologies that characterize or assess the extent of contamination or the chemical or physical character of the contaminents at such sites.

"(f) REPORTS TO CONGRESS.—(1) At the time of the submission of the annual budget request to Congress, the President shall submit a report to the Environment and Public Works Committee of the Senate and the Science and Technology Committee, the Energy and Commerce Committee, and the Public Works and Transportation Committee of the House of Representatives on the progress of the research development, and demonstration program authorized by this Act, including an evaluation of the demonstraton projects undertaken, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous substances, the costs of such demonstrations, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(2) If the total estimated Federal contribution to the cost of any field demonstration project under section (a) exceeds $5,000,000, the President shall provide a full and comprehensive report on the proposed demonstration project to the Environment and Public Works Committee of the Senate, and the Science and Technology Committee, the Energy and Commerce Committee, and the Public Works and Transportation Committee of the House of Representatives, and no funds may be expended for such project under the authority granted by this section prior to the expiration of 30 calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain) from the date on which the President's report on the proposed project is received by the Congress.

"(g) The President shall, to the maximum extent practicable, provide adequate opportunity for small business participation in the activities authorized under this Act".

(b) Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended as follows:

(1) Strike out "and" at the end of paragraph (8)(B).

(2) Strike out the period at the end of paragraph (9) and substitute "; and".

(3) Add the following new paragraph at the end thereof:

"(10) standards and testing procedure by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act."

(c) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"( ) There is authorized to be appropriated for each of the fiscal years 1986, 1987, 1988, 1989, and 1990, from sums appropriated or transferred to the Hazardous Substance Response Trust Fund under section 9505(b)(1)(c) of the Internal Revenue Code of 1954, not more than $25,000,000 to be used for purposes of carrying out the research, development and demonstration program for alternative or innovative technologies authorized under section 116. Amounts made available under this subsection shall remain available until expended".

(d) Within four years from the date of the enactment of this section, the President shall transmit to Congress a study of the effects of the standards of liability and financial responsibility requirements imposed by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies.

Mr. MOYNIHAN. Mr. President, I rise to offer an amendment to S. 51, the important and well crafted legislation that we have now before us to extend the Superfund Program. The purpose of this amendment, which our distinguished chairman has agreed to, is simply to enable the Environmental Protection Agency to conduct research on new technologies for the work of the Superfund—which is, after all, to clean up abandoned hazardous waste sites.

I and the other Senators on the Environment and Public Works Committee have become concerned that we may have got into a pattern of simply digging up toxic waste in one place and planting it in another without finding effective ways to detoxify it or destroy it. I see the Senator from West Virginia here as well, and I know he shares our concerns.

EPA's only authority to do research on hazardous waste technologies is that conveyed under RCRA, the Resource Conservation and Recovery Act, but such does not allow the actual testing of new and hopefully more effective technologies at Superfund sites.

This amendment would give EPA that authority, on a limited basis, lest we find ourselves simply shuffling our toxic waste from one site to another.

There can be no one in the U.S. Senate who is more aware of the need for better techniques for the Superfund Program than a Senator from New York. This Senator from New York well remembers that one day in August 1978, the whole world learned of a place called Love Canal. The emergency declared there by the President made it suddenly clear to everyone that there was indeed a serious problem with the way we had disposed of our hazardous wastes; this we all now recognize as a national problem.

We have made progress in the 7 years since that emergency declaration and the 5 years since Superfund was created. But after all this time, we still do not have an acceptable answer for Love Canal. We have asked the EPA for thorough cleanups—and told them to do so as inexpensively as possible. We have told them to use proven technologies, and wound up with either containment onsite or the shell game.

My amendment, Mr. President, directs the EPA to conduct a limited research and demonstration program to test new technologies for Superfund cleanups. The means to clean up these sites thoroughly, permanently, and cost-effectively may already exist; if not, surely better methods will be discovered. This program allows the agency to find them, and to try them.

I believe our revered and very accessible chairman is agreeable to this.

Mr. LAUTENBERG. Mr. President, I commend the Senator from New York for his leadership in offering this important amendment on Superfund research and development.

I strongly support this amendment. It is imperative that we develop effective means of disposing of this Nation's hazardous waste. We must not continue to solve one problem by creating another because of ineffective disposal or treatment technologies.

There are currently 850 Superfund sites proposed or listed on the national priority list. I believe that we must remove the hazardous substances and wastes from these sites rather than attempt to simply contain them. Containment is a risky solution that may end up being the most costly of remedies.

The alternative is removing the toxic material and either treating it on or off site, or disposing of it in a secured facility. Unfortunately, over 60 percent of our permitted disposal facilities under the Resource Conservation and Recovery Act are leaking, and many are still in interim status and are not required to meet the more stringent standards of fully permitted facilities.

Mr. President, this amendment calls for the expenditure of $25 million per year from the fund for research and development of more effective and innovative treatment methods. While this $25 million is $25 million less that is available for site cleanup, I feel that these funds may indeed repay the fund many times over in reduced costs due to more permanent cleanups. With the prospect of many of our currently operating RCRA waste disposal facilities becoming Superfund sites, we must consider the long-term costs, both in dollars and in public health and environmental damage.

The research and development program under this amendment allows the President to make grants or enter into cost sharing agreements with public and private entities, to the extent that the private entities are nonprofit. It allows for demonstration of alternative or innovative technology at sites listed on the national priority list as long as these technologies assure the same level of protection to human health and the environment provided for under the statute. The President would be required, after 2 years, to designate at least 10 sites for research and development demonstration. The President must submit an annual report to the relevant congressional committees on the progress of these projects.

Mr. President, this program is intended to aid in developing effective treatment methods. It must not be used as a means of circumventing more stringent remedial action and clean up requirements. Congress must maintain an active role in monitoring the selection of sites and new technologies applied under this provision.

Last year, New Jersey was confronted with a very difficult dilemma. The plan at one of these State's most dangerous sites, Burnt Fly Bog in Marlboro Township, was to send the PCB contaminated soil from the site to the CECO's landfill site in Williamsburg, OH. Just before the trucks were to be loaded with the soil and sent to New Jersey, the Environmental Protection Agency ordered the Viceroy landfill to be closed. Massive groundwater contamination from the site was discovered, and an aerial photograph printed in the New York Times showed pipes that were routinely carrying overflow from the site into the nearby woods. This was a shocking revelation, and one that confirmed in my mind that we must take every step to stop the toxic waste merry-go-round that is plaguing our cleanup efforts. A recent report by the Office of Technology Assessment [OTA] highlighted this situation as one of the most serious problems facing our toxic waste cleanup efforts.

Mr. President, I ask unanimous consent that the article from the New York Times on the Williamsburg, OH site be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LAUTENBERG. Mr. President, I am pleased to be a cosponsor of this amendment. We are joined in the House of Representatives by my able colleague from New Jersey, Congressman TORRICELLI, in offering this legislation to the Superfund reauthorization. I urge my colleagues in the Senate to adopt the amendment before us.

EXHIBIT 1

OFFICIALS IN OHIO SHUT KEY DUMP FOR TOXIC WASTE

(By Philip Shabecoff)

WASHINGTON, November 13.—The Ohio Environmental Protection Agency has shut down one of the country's biggest toxic waste dumps after receiving reports that its operators knowingly pumped contaminated water into the drinking water supply of a nearby town.

A spokesman said today that the agency had asked the state to investigate whether the operators of the dump near Williamsburg, Ohio, had committed a crime. The state spokesman, Allan D. Franks, said the site was ordered closed over the weekend.

A spokesman for the owner of the site, Cecos International, said that there had been no wrongful intent and that the company was cooperating fully with the authorities.

The Cecos dump is a depository for hazardous substances removed from toxic waste sites, some as far away as Massachusetts that have been found to threaten the environment and public health.

PROBLEM AT OTHER SITES

Officials at the Federal Environmental Protection Agency have acknowledged that many of the sites to which toxic wastes are sent, under the Government's program to clean up potentially dangerous abandoned dumps, may themselves be leaking or otherwise deficient.

The Federal agency is currently investigating evidence that another Cecos dump site in Niagara Falls, N.Y., where wastes from Love Canal and other abandoned sites were transferred, may be leaking into the community.

Basil G. Constantelos, director of waste management for the Federal agency's

Middle Western regional office, said the agency was planning to do a "detailed evaluation" of the underground water at the Cecos dump site in Ohio within the next few weeks. He said, however, that the inspection had been planned before the site was shut down and that his agency did not have evidence of any leakage or other threats to health and the environment.

According to Mr. Franks, a state inspector discovered last week that excess water on top of one of the dump's waste collection cells had been pumped into a tributary of nearby Pleasant Run Creek. The creek is a source of drinking water for the community of Williamsburg.

The inspector, who is permanently stationed at the site, sampled the water being pumped into the tributary and found that it was contaminated with phenol, which is regulated under the Federal toxic substances law as a poisonous chemical, Mr. Franks said. While the extent of the contamination is still being analyzed, he said, water that is contaminated by a hazardous substance becomes a hazardous substance itself, under the law.

He said that the "good news" is that Williamsburg's water treatment plant is nine miles away from the dump and that there was general agreement that the treatment plant "would take care of" the contamination.

"But this shouldn't have happened," he said. "We consider this to be a very, very serious offense."

The Ohio environmental agency has begun a "comprehensive investigation" of the site, Mr. Franks said. Meanwhile, the agency has asked the Ohio Bureau of Criminal Investigation to see whether Cecos employees violated toxic waste laws, he added. The Federal E.P.A. has delegated responsibility for enforcing the toxic waste law to state governments.

EARLIER PROBLEMS AT SITE

"It appears that a lot of people were aware of what was done and, in effect, signed off on it," Mr. Franks said.

Mr. Franks said that, in the past "there have been problems on and off with the site." He said that earlier in the year the agency had found that water from a pond on the Cecos grounds was being pumped into the air to spread it over the ground. The spray was seen to have been drifting over the site boundaries and on to the roofs of nearby homes, and the agency ordered the practice stopped.

The Cecos site in Ohio has taken hazardous wastes from a number of major dumps cleaned up by the Federal Government, including the Valley of the Drums in Kentucky, where leaking containers of toxic substances were simply buried in the ground.

When the landfill was ordered closed this weekend, some 15 trucks carrying hazardous wastes from a site in Massachusetts were on the way to Williamsburg. When they arrived, the state agency allowed them to dump their wastes at the site on the theory that it would be environmentally safer than turning the trucks away. But Mr. Franks said that the site was now closed for an indefinite period until the investigations are concluded.

EXCELLENT RECORD CITED

Mary P. Bauer, corporate communications manager for Cecos, said: "At this point we are just cooperating fully with them in their investigation. The company's position is that there was no wrongful intent and certainly any activities were not criminal in nature."

She said the company had been told by the Williamsburg Water District that their analyses had shown no contaminants in the local water system.

Thomas Moran, vice president of Cecos, said that the water pumped into the creek was "standing rainwater" and that the company was investigating to determine if the water was contaminated.

"The site has an excellent compliance record," Miss Bauer said. "This is the first time our activites were suspended by Ohio E.P.A. and we have never been suspended by the Federal E.P.A."

She added, "We expect the investigation to be completed quickly."

Mr. STAFFORD. Mr. President, we have been well aware of the amendment which the distinguished Senator from New York [Mr. MOYNIHAN] has proposed to offer. We have examined it. We believe that it is meritorious and will accomplish a good purpose that is needed.

For the majority of the committee, I am prepared to accept it, and I have consulted with Senator BENTSEN, and I believe he is prepared to accept it also.

Mr. MOYNIHAN. I believe that is the case. If I could say to my chairman, I believe I am also momentarily the floor manager on this side, and I accept it.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment (No. 669) was agreed to.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. I thank the distinguished chairman.

Mr. LEAHY. Mr. President, I rise today to urge my colleagues to support S. 51, legislation reauthorizing the

Hazardous Substance Response Trust Fund or Superfund.

Senator STAFFORD and the other members of the Committee on Environment and Public Works are to be commended for their efforts to reauthorize and improve our Nation's system of responding to the problem of hazardous waste.

The Environmental Protection Agency estimates that there are now some 20,000 or more hazardous waste sites in the United States. And that number is growing every day. The problem is enormous.

Critics charge that we in Congress often respond to problems of such magnitude with a pitchfork and a truck load of million dollar bills. Such is not the case with Superfund.

Properly disposing of hazardous waste and cleaning up potentially dangerous Superfund sites require carefully and scientifically planned action. Eliminating the threat to our environment by hazardous wastes is not a mission which money alone can accomplish.

Over the last 4 years Congress has judiciously raised and spent $1.6 billion to begin our national effort to identify and clean up hazardous wastes. That money has been spent not only on cleaning up specific sites, but on developing methodologies and practices for fighting hazardous wastes in the future.

On September 30, 1986, the authority of Congress to raise revenues and appropriate moneys to support Superfund will expire. The Environment and Public Works Committee and the Senate Finance Committee have reported the legislation which is before us today to expand and improve the Superfund.

Some $7.5 billion would be raised mainly through excise taxes to broaden our attack on hazardous waste. The lessons of the last 4 years now enable us to expand this campaign. New scientific advances have been made. Superfund is more efficient and the two most recent Administrators of the EPA have told Congress that Superfund workers are ready to take on this problem on a larger scale.

I doubt that there is one Member of this body or of the House of Representatives who does not support Superfund, and who does not support increasing its efforts, in light of the new proficiency we have in dealing with hazardous wastes. There is some consternation, however, concerning the funding mechanism which the Senate Finance Committee approved on May 23, 1985.

For the past 4 years, Superfund has been financed, in large part, by an excise tax on petrochemicals. Indeed, the so-called feedstock tax on 42 designated chemicals has provided seven-eighths of Superfund moneys since 1981.

In May, the Environment and Public Works Committee sent legislation to the Finance Committee requiring that $7.5 billion in revenues be raised over the next 5 years to finance Superfund. After careful consideration and debate, the Finance Committee recommended that the feedstocks tax be continued, and that a new tax on manufacturers be imposed.

The manufacturers excise tax, which would raise $5.4 billion, would be imposed at a rate of $8 for every $10,000 earned from the sale or lease of property. This tax would only apply to firms with taxable receipts of more than $5 million. There would be no tax on exports and manufacturers would be allowed to take a tax credit for the amount by which the excise tax increases the cost of their purchases.

In its report accompanying the Superfund legislation, the Senate Finance Committee argued that the new manufacturers excise tax would broaden the tax base which supports Superfund. Under current law only approximately 600 firms are footing the bill for Superfund. Albeit, these firms are some of the producers of hazardous waste. Under the legislation before us, some 32,000 firms would share the cost of the expanded Superfund effort.

The business community has been very critical of the Finance Committee's manufacturers excise tax, claiming that it is a hidden value added tax. The cost of Superfund, they say, will ultimately be passed on to consumers in the form of higher prices. In addition, they argue that the current feedstock tax only taxes those who directly produce potentially hazardous wastes, while the new manufacturers tax would unfairly tax all larger firms.

Yet, the Finance Committee has included provisions which allow American manufacturers to remain competitive in the world economy, by exempting exports from the tax. Additionally, no one industry in the chain of production of a product would be forced to bear the full burden of the excise tax, because a tax credit will be made available equal to the increased purchase price which a manufacturer must pay as a result of excise taxes imposed at earlier points in production.

I too have serious reservations about value added taxes of any kind. But, I have no doubts, whatsoever, about the need to increase our efforts to clean up hazardous wastes. I, for one, want to make it clear that today I am casting my vote for Superfund, not for value added taxes.

Any effort at this point to strike the funding mechanism for Superfund approved by the Senate Finance Committee only serves to distract us from our central purpose, which is to renew and improve Superfund.

The battle over the funding mechanism for Superfund was won or lost, depending on your perspective, in the Finance Committee. Any attempt now to rewrite the tax aspects of the Superfund legislation would cause an unnecessarily protracted debate to occur. If Superfund were not about to expire, if the problem were not so immediate, perhaps we could afford to hold such a debate.

But, there is no time. The threat of hazardous waste increases every day, and we are doing all we can right now to keep up with it. President John F. Kennedy understood this situation well. In 1963 he wrote to Congress:

> Actions deferred are all too often opportunities lost, particularly in safeguarding our natural resources.

I urge my colleagues to support and approve with dispatch the Superfund Improvement Act of 1985.

Mr. COHEN. Mr. President, I want to express my strong support for passage of S. 51, the Superfund Improvement Act of 1985. This is a bill of extreme importance to the health and welfare of millions of Americans whose homes are near the site of dangerous toxic waste dumps. I am pleased that the leadership has recognized the need to complete work on this bill as soon as possible so that we can move towards final action on this critical reauthorization bill.

For those of us who have not experienced the fear and apprehension which comes with living near or on top of a hazardous waste site, the emotional depth of such feelings is difficult to comprehend. It is, however, very real and cannot be dismissed lightly. Across the State of Maine, from Saco to Washburn, we have experienced the contamination of land and water from a municipal waste dump, groundwater contamination from a toxic gravel pit, PCB contamination from abandoned electrical transformers and chromium contamination from 20-year-old tannery waste pits. Other sites are known to exist and remain a hazard to surrounding communities until they are removed. The need to maintain a strong Superfund is quite clear in my mind. It is our responsibility to ensure that the removal of toxic wastes from our neighborhoods proceeds without unnecessary delay and that the costs are borne by those responsible for causing the damages.

In the first 5 years of Superfund's operation, a number of problems with the original law have surfaced, and S. 51 aims to strengthen the act so that cleanups can proceed more smoothly and changes are made where necessary to ensure that both the Environmental Protection Agency and responsible private parties understand that the cleanup of abandoned hazardous waste sites remains a national priority. It is only with continued diligence that the program can be viewed as a success, and that success is based on the expansion and extension of the Superfund which S. 51 contemplates.

We have learned a great deal since 1980, including the sobering realization that the number of hazardous waste sites across the Nation is far greater than originally assumed. In addition, we have learned that the potential threats to human health and environmental degradation from the presence of hazardous substances may occur in many areas that do not fit under the heading of "abandoned hazardous waste dump." Our commitment to the removal of all such hazards must remain firm. In addition to additional funding, a successful cleanup effort will require the cooperation of the Federal Government, private parties and the public.

The passage of a strengthened Superfund, as embodied in S. 51, is a major step in the restatement of our commitment to a meaningful cleanup program. We can only hope that, when carried out, it will represent a sensible approach to the problem of hazardous waste removal that will ensure the protection of the public from uncontrolled hazards. The public certainly has the right to know what dangers might be present in their neighborhoods and what is being done to remove them, and it serves no one to prevent that knowledge.

I again express my support for the passage of S. 51 and applaud the work of the members of the Environment Committee who have worked diligently to bring a meaningful bill to the Senate floor. I trust that final passage of this legislation by the Senate will prove to be the impetus needed to secure support by the whole Congress and the administration for an improved Superfund.

Mr. BINGAMAN. Mr. President, I rise to commend the distinguished chairman and ranking minority member of the Environment and Public Works Committee for their efforts to bring this Superfund reauthorization bill to the Senate. The task of providing protection for our citizens from toxic contamination is so important that we must ensure continuous support while also making every effort to make the program more effective than it has been to date.

The committee has worked hard to report out this bill, and I do not wish to delay its approval further by introducing another amendment. However, there is an issue which deserves to be considered. There is a problem in my State of New Mexico and in many other States as well. This is the problem of leaking underground storage tanks. Public officials in New Mexico have determined that this leaking underground storage tank problem is one of the leading causes of ground water and soil contamination by toxic substances. Yet, because of the petroleum exclusion in the Superfund law, the law and the fund cannot be used in these instances to protect affected residents by using fund moneys to clean up an emergency situation while also seeking to hold identified responsible parties accountable.

Our counterparts in the House have made an effort to address this problem in H.R. 2817, a bill which has been reported out by the House Energy and Commerce Committee and which may be the basis for action by the full House. While I do not agree with every aspect of the program which is proposed in that legislation, it would provide some means for attacking this problem. Specifically I do believe that any cap placed on liability should be designed primarily to protect against bankrupting small business, while generally holding the party which caused the pollution fully responsible.

Mr. President, I would ask that once the Senate has passed this bill before us, and a conference committee is named, that Senate conferees be encouraged to consider a way to address soil and ground water contamination from leaking underground petroleum storage tanks.

Mr. BENTSEN. I thank my colleague from New Mexico for his comments on this issue. He has raised an issue that the committee recognizes as a significant problem. The solution, however, seems fairly elusive. I certainly am willing to work in conference to identify a potential solution to this problem.

Mr. STAFFORD. I appreciate the Senator from New Mexico's interest in this issue and I share his concern for the problem presented by the presence of leaking underground storage tanks. I assure him of my willingness to consider appropriate action in conference to deal with this problem.

SUPERFUND EXCISE TAX

Mr. NICKLES. I would like to clarify the application of this tax to the natural gas industry and explain industry custom and practice and how it relates to tax principles. Am I correct that the Superfund excise tax would be applicable to the sale of natural gas by a producer, since it is the intent of the act that he would be considered a manufacturer of tangible personal property?

Mr. PACKWOOD. The Senator is correct.

Mr. NICKLES. Am I further correct that the subsequent resale of that natural gas by a pipeline is not a taxable transaction, based on the definitions in section 403 of S. 51; and, that manufacturing does not include storage, transportation, or sale by retailers or wholesalers so long as there is only incidental preparation of the property?

Mr. PACKWOOD. The Senator is correct that a natural gas pipeline that purchases natural gas at point X, transports it to point Y, and resells it is not a manufacturer for purposes of the Superfund excise tax and therefore there is not a taxable person.

Mr. NICKLES. As the Senator

knows, a natural gas pipeline may purchase gas for resale from an affiliated or from an unaffiliated producer. In these cases, it is readily ascertainable that there is a sale and therefore a taxable transaction which creates tax liability for the producer-manufacturer. However, as the Senator also is aware, there is a common industry practice whereby a pipeline produces a small portion of its own supply, what is generically known as pipeline-owned production, as contrasted with purchasing from an affiliated or unaffiliated producer.

Under applicable Federal Energy Regulatory Commission regulations, 18 CFR 154.42, pipeline-owned and produced gas is treated the same as gas produced by an affiliated company. Although no title or transfer actually takes place, the producing arm of the pipeline is deemed to have made a sale of gas under 18 CFR 270.203(b). The price at which this sale takes place is governed by the Natural Gas Act and Natural Gas Policy Act [NGPA]. This price is analogous, for excise purposes, to a constructive or assumed sale price and is a principle that is already well established within the Internal Revenue Code. The most notable example is the Crude Oil Windfall Profits Tax Act of 1980. When oil or gas is removed from the premises prior to its actual sale, the gross income utilized for depletion (Code section 613(a)) and windfall profits tax purposes (Code section 4988(c)) are assumed to be the equivalent of the representative market or field price of the oil or gas under regulation section 1.613 3(a). This constructive price, that is, the representative market or field price, is analogous to the firest sale concept in the Natural Gas Policy Act.

A major advantage of applying the excise tax at this point is the reduced administrative burden associated with the calculation of a transportation cost. Because gas supplies are commingled by a pipeline, it would be impossible to determine who are the specific purchasers of this pipeline-owned gas. Furthermore, transportation is calculated on a systemwide basis, not on the actual cost of transporting any particular molecule of gas. Hence it would not be possible to calculate the transportation cost of pipeline-owned supplies.

Is it the intent of the Superfund excise tax to specify that the taxable sale occurs for pipeline-owned production at this point of constructive or first sale, rather than when this pipeline subsequently sells the natural gas to a customer?

Mr. PACKWOOD. The Senator raises a good point which deserves clarification. The Superfund excise tax is not intended to apply to the transportation of this gas, therefore, Superfund excise tax provisions should treat pipeline-owned production as if the taxable transaction had taken place at the wellhead, that is, when the gas is delivered to the pipeline. This would be the equivalent of a producer selling to the pipeline for purposes of the Superfund excise tax.

Mr. NICKLES. I thank the distinguished chairman for this clarification.

● Mr. BRADLEY. Mr. President, for the past several days we have debated the most important environmental issue that we will face this year. The reauthorization of Superfund is crucially important to New Jersey and the Nation. Time is of the essence—the program is now on hold due to lack of funds. I urge my colleagues to support this vitally important legislation.

In March 1983 I offered the first Superfund reauthorization bill to be introduced in the Senate. I was concerned that the mismanagement and abuse of the Superfund Program by the previous leadership of the Environmental Protection Agency had tarnished the perception of our commitment to continuing and completing the cleanup of hazardous wastesites that threaten the health of citizens around the Nation. I wanted to send a signal to the people that their Government had not reneged on its commitment, made to them with the passage of Superfund in 1980. My concern remains. Today we have the chance to make good on that commitment.

The bill we are considering today is a good bill. So far we have debated title I which contains programmatic changes to the existing Superfund law that strengthen and improve the operation of the program. Several of the provisions are based on provisions included in bills I have introduced in the past. Specifically, the State credit provision, which allows a State to take action even in advance of receiving Superfund moneys from the Federal Government, first appeared in my S. 2012, introduced in the last Congress and cosponsored by my colleagues from New Jersey [Senator Lautenberg]. Similarly, the State share provision, which would limit the State share of Superfund liability to 10 percent if the State owned but did not operate the disposal site, was included in S. 2012. The preemption language in S. 51, which makes it clear that States are free to impose their own taxes to fund their own hazardous waste cleanup efforts, came from my S. 2012. One of my continuing concerns has been the delay in actually accomplishing the cleanup actions at Superfund sites. My bill in the last Congress offered some solutions to this problem and these have formed the basis of several of the provisions in the bill before us now. Finally, the provisions in my bill concerning claims for damage to natural resources formed the basis for the provisions in S. 51.

The Senate has accepted three amendments that I have offered that have significantly strengthened this portion of the bill. The first dealt with a related threat to public health, lead in drinking water. The second, offered with Senators Mitchell and Lautenberg, dealt with the threat imposed by indoor air pollution and, in particular, radon gas. The third dealt with improving the speed and reducing the cost of cleaning up specific radon-contaminated Superfund sites. All three amendments were required to provide the needed protection of public health.

The second portion of S. 51 which we take up now is the revenue title. In the history of Superfund's journey through the Senate this year, the funding issues have proven to be more difficult. Once the Environment and Public Works Committee had completed action on S. 51, the focus shifted to the Finance Committee which had the task of finding the revenues to fund Superfund at the higher levels necessary to clean up the Superfund sites, the number of which had grown dramatically since 1980 when we first passed the Superfund law.

The Finance Committee faced a real challenge. The original bill was funded at $1.6 billion. The reauthorization requires at least $7.5 billion. The original law obtained most of its revenues from a tax on petroleum and chemical feedstocks and the remainder of the revenues from the Federal taxpayer. Neither the feedstock tax nor the Federal budget provided any room for increasing Superfund revenues. The administration was proposing a new tax—a tax on wastes as they are generated. Indeed, such a waste-end tax appeared to have merit—I included one version of the waste-end tax in the bill I introduced. The principal problem was that the waste-end tax was not capable of producing anywhere near the required revenues.

At this point the progress of Superfund through the legislative hurdles appeared stopped. In March of this year, I offered the first broad-based tax to be introduced in the Congress. I proposed to tax all corporations making over $50 million per year at a rate of 0.08 percent—0.0008—of their corporate net receipts. Conventional wisdom had it that it was politically risky to propose a new tax on businesses, but it seemed to me that no other alternative existed if Superfund were to be reauthorized at a level of funding sufficient to do the job over the next 5 years. As it turned out, the Finance Committee agreed with me and not the conventional wisdom. Senators Bentsen and Wallop subsequently introduced their version of the broad-based tax, as did Senators Mitchell and Chafee. We collaborated on the final version which was adopted by the committee with but one dissenting vote.

Here I should point out the remarkable job accomplished by the chairman of the Finance Committee, Senator Packwood, the ranking member of the minority, Senator Long, and the able Senator from Texas with responsibilities on both committees, Senator Bentsen. Without their leadership and commendable cooperation we would not be here today.

Mr. President, it is no secret that some members of the Senate and the administration are unenthusiastic about the revenue title contained in this bill. The bulk of the grumbling about the broad-based tax goes like this: "I agree we need more revenues for Superfund," they say, "but I don't like the way the Finance Committee did it." To them I offer a simple challenge: come up with an alternative. The alternatives being suggested by Senator Helms are to require the

States to pay more or to freeze the fund at its current level, a level even the administration admits is totally inadequate.

Is there an alternative, Mr. President? Who will propose we fund Superfund by increasing the budget deficit? Who will propose quadrupling the feedstock tax on chemical companies, companies now struggling to compete in international markets? Who has an alternative? Come forward. The Finance Committee carefully examined as many alternatives as we could collectively think of and we concluded that this was the only way to raise the revenues necessary to fund Superfund adequately for the next 5 years.

Do you know what the principal argument against the broad-based tax is, Mr. President? The principal argument is that the broad-based tax is too good. It is too good in that it doesn't hurt anyone enough to make them protest. These critics perhaps would have wanted the Finance Committee to impose a tax on some segment of the economy which would find the tax so unfair or burdensome that it would scream loudly if the tax were ever proposed for an increase. Do any of the critics have such an unfair or burdensome tax that they would like to propose to the Senate here today? I would like to consider it.

No, Mr. President, I submit that if we had attempted to impose such an unfair or burdensome tax, we would not be on the floor here today. These critics are worried about any tax that is as painless as this tax because it might be increased at sometime in the future. And I contend that this criticism is actually praise for the work of the Finance Committee.

Mr. President, we must act on Superfund here today. We have already waited too long. The fund is at such a low level that the EPA Administrator, faced with the expiration of the taxing authority on September 30 of this year, halted all but emergency work on Superfund sites. This program, so vital to public health and confidence in Government, cannot be allowed to lapse. There is no more pressing issue before Congress today than this Superfund reauthorization. We must act today.

We made a promise 5 years ago to clean up the thousands of hazardous wastesites that blight our land. The creation of the Superfund in 1980 told the American people that the Government recognized a mammoth problem, a continuing threat to public health, and that it could take the necessary steps to address that problem. Today the American people are wondering what happened to that promise. They see only slow progress cleaning up the sites in their communities. They saw the first several years of the Superfund's existence wasted by an EPA willing to use the Superfund for political favors instead of for cleaning up hazardous waste. Can we blame them for their skepticism?

We must reaffirm that promise we made back in 1980. We have the chance to make good on it now. We cannot wait any longer.●

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DURENBERGER). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

[From the Congressional Record, Sept. 23, 1985, pp. S11918-S11920, S11926-S11956]

SUPERFUND IMPROVEMENT ACT OF 1985

The **PRESIDING OFFICER**. The Senate will now resume consideration of the pending business, S. 51, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 670

Mr. **STAFFORD**. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER**. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont, Mr. STAFFORD, for himself and Mr. BENTSEN proposes an amendment numbered 670.

On page 51, line 11, strike "or (b)" and insert in lieu thereof ", (b), or (j)".

Mr. **STAFFORD**. Mr. President, this is purely a technical amendment. It makes no substantive change in the bill at all. I believe there is no opposition to it. It is necessary that we accomplish this.

Mr. **BENTSEN**. Mr. President, speaking for the minority, we have examined the technical amendment and see no problems with it and are pleased to support it.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment.

The amendment (No. 670) was agreed to.

Mr. **STAFFORD**. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **BENTSEN**. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 671

Mr. **BENTSEN**. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER**. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. BENTSEN] proposes an amendment numbered 671.

Mr. **BENTSEN**. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

On page 49, after line 25, insert the following new section and renumber succeeding sections accordingly:

LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

SEC. . (a) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding the following new paragraph:

"( ) 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.".

(b) Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended as follows:

(1) Subsection (a)(3) is amended by inserting "or incineration vessel" after "facility";

(2) Subsection (a)(4) is amended by inserting ", incineration vessels" after "facilities";

(3) Subparagraph (A) of subsection (c)(1) is amended by inserting ", other than an incineration vessel," after "vessel";

(4) Subparagraph (B) of subsection (c)(1) is amended by inserting "other than an incineration vessel," after "other vessel,";

(5) Subparagraph (D) of subsection (c)(1) is amended by inserting "any incineration vessel or" before "any facility".

(c) Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended as follows:

(1) Paragraph (1) is amended by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";

(2) Add a new paragraph to read as follows:

"(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and by any other factors deemed relevant."

(d)(1) Section 108(g)(5) of the Marine Pro-

tection, Research and Sanctuaries Act of 1972 is amended by striking "The injunctive relief provided by this subsection shall not" and inserting in lieu thereof "Nothing in this Act, including the injunctive relief provided by this subsection, shall", and by inserting before the period ", including relief under Title 42, United States Code, section 1983, or as a maritime tort".

(2) Section 107(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting ", under maritime tort law," after "with this section" and by inserting before the period "or the absence of any physical damage to the proprietary interest of the claimant".

Mr. BENTSEN. Mr. President, I offer an amendment that would modify Superfund so that releases from ocean incineration would be treated similarly to land-based incineration. Currently, liability for damages caused by releases from ocean vessels is limited by the value of the vessel, which is clearly an inadequate amount.

My amendment would clarify that owners or operators of incineration vessels are liable for releases from such vessels. There is currently an inequity in the law, which permits a $5 million liability limit per vessel, while liability for land-based incinerators is for full cleanup costs plus $50 million for natural resource damages. This amendment erases the distinction between liability for ocean incineration and liability for land-based incineration. In addition, the amendment provides that vessel owners and operators are liable for up to $50 million in natural resource damages, as land-based owners are under present law. The modifications I am proposing also assure that, as with land-based incinerators, persons generating substances for vessel incineration, as well as persons transporting such substances, remain liable for any releases that might occur in conjunction with such incineration.

Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is also amended to require the Administrator to establish evidence of financial responsibility specific to incineration vessels. As in other financial responsibility requirements, a variety of mechanisms such as insurance, risk retention pods, letters of credit, bonds, self-insurance, and others may be used to provide evidence of financial responsibility. Required financial responsibility for stack emissions from incineration vessels under this provision should be the same as the financial responsibility required for land-based incinerators under section 108(b) and subtitle C of the Solid Waste Disposal Act.

These changes address a serious inequity in current law. States that are adjacent to marine environments are at particular risk in the event of a release.

Mr. President, this amendment also clarifies the question of accidents involving ocean incineration where Federal admiralty law and State law are unlikely to afford an opportunity for recovery.

There is a strong demand, interest, and concern that there be clear liability for third-party damages as well as the cleanup costs. So this amendment, as prepared, is a change to the Ocean Dumping Act that removes these barriers to third-party claims. It clarifies the congressional intent in that regard, allowing claims for third-party damages under other applicable Federal and State law.

Additionally, I have clarified that under CERCLA and maritime tort law third parties may recover for economic loss due to releases of hazardous substances even though there is no direct physical damage. Thus, for example, down in our part of the country commercial fishermen in the gulf injured by a release from an incineration vessel can recover their damages in that regard.

Mr. President, I urge favorable consideration by this body of this amendment.

Mr. STAFFORD. Mr. President, we have examined the amendment offered by my friend and colleague, the able Senator from Texas, Mr. BENTSEN.

We believe it is a good amendment. We believe its adoption will improve the package that we are working on for Superfund.

We are prepared to accept it.

Mr. BENTSEN. Mr. President, I urge favorable consideration of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Texas.

The amendment (No. 671) was agreed to.

Mr. BENTSEN. Mr. President, I

move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FINANCING SUPERFUND

Mr. LEVIN. Mr. President, I wish to take a few moments to raise with my colleagues an alternative approach with respect to financing Superfund.

It is clear to many in this body, including myself, that we should have great concerns with instituting a value-added tax as the means for financing the Superfund Program. At a time when many people seek a more simplified Tax Code, the value-added tax adds new complexity. At a time when people seek greater fairness in the Tax Code, the value-added tax adds new inequities.

All of us in this body have met with members of the business community who have complained about excessive Government involvement in their affairs. The President has also established deregulation as an essential part of his program. Why, then, are we considering a value-added tax which will burden many, many businesses of this country with new forms to fill out and new taxes to pay when there is an alternative to financing Superfund which, for every business, will involve no new forms and no new taxes?

Furthermore, why are we considering imposing a broad-based regressive tax on American consumers? Everyone in this body would like to see a fairer Tax Code. But what the tax does is to provide a new inequitable way to take disproportionately more from those who can afford it least. Why are we taking steps to impose a regressive tax on individuals already paying taxes when at the same time some profitable corporations are paying nothing in taxes? Recent reports indicate that, from 1981 to 1984, 50 firms earning $58 billion in profit paid nothing in taxes—in fact received refunds of $2.4 billion. In 1984 alone, 40 firms earning $10 billion in profits paid nothing in taxes, and in fact received $650 million in refunds.

There is an alternative to the value-added tax which will be a giant step toward fairness and not a leap backward. The alternative I am speaking about is an effective minimum tax on profitable corporations. There are a number of specific proposals which have been made along these lines which could meet the goals I have set up. I will have more to say on an effective minimum tax on corporations as an alternative to the value-added tax as the debate on this bill continues.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. EVANS). Without objection, it is so ordered.

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SUPERFUND IMPROVEMENT ACT OF 1985

The Senate continued with the consideration of the bill.

Mr. STAFFORD. Mr. President, I would like to propound an unquiry to the principals of the amendment to be offered, Senator ROTH and Senator MITCHELL. Knowing that we cannot vote today, I would say to my colleagues, would they jointly be willing to consider a unanimous-consent request that debate tomorrow, prior to voting, might be limited to 20 minutes, 10 minutues on each side? Would that be agreeable?

Mr. ROTH. Yes; that will be satisfactory.

Mr. STAFFORD. Would that be agreeable to Senator MITCHELL?

Mr. MITCHELL. That is agreeable to me.

Mr. STAFFORD. I thank both Senators.

Mr. President, I am prepared to yield the floor.

The PRESIDING OFFICER. Is the Senator making that request?

Mr. STAFFORD. No; the Senator is not at this point. I would say to the Presiding Officer I am not proposing a unanimous-consent request. I am simply ascertaining the wishes of the principals. I will defer to the leadership for a unanimous-consent request.

AMENDMENT NO. 673

Mr. MITCHELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Mr. Mitchell] proposes an amendment numbered 673.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 99 insert the following on line 6 before the words "of the disease": ", who have been exposed to a release of the relevant hazardous substance,".

On page 99, insert on line 9 after the word "individuals" the following: "who have been exposed to a release of the relevant hazardous substance but".

On page 99 insert on line 15 after the word "individuals" the following: ", who have been exposed to a release of the relevant hazardous substance, ".

Mr. MITCHELL. Mr. President, this amendment has been cleared on both sides with both supporters and opponents of the provision regarding a Victim Assistance Demonstration Program. It is an effort to clarify what has been one of the controversial areas regarding this provision.

It would provide at the relevant points in the bill that any benefits under this demonstration program are limited to persons—and I now quote the relevant words of the amendment: "Who have been exposed to a release of the relevant hazardous substance."

This matter arose in the Environment and Public Works Committee when this matter was thoroughly debated. I stated at that time that it was my intention in drafting this provision that such benefits be limited to persons who have actually experienced exposure.

Those who have opposed this provision have rightly been concerned about that fact. In an effort to make it absolutely and unmistakably clear that that is the case, I have offered this amendment so there can be no further doubt or question about that.

I have discussed it with Senator Roth and Senator Simpson, as well as Senator Stafford. I believe we are all in agreement that this does make that point clear. I now yield to either Senator Roth or Senator Simpson, if they care to make any comment on this. Following that, I will move adoption of the amendment.

Mr. ROTH. Mr. President, I have no objection to a modification. I would only make the admonishment that while it brings some clarity into it, there still is an ambiguity as far as I am concerned. I would not want to say that it necessarily eliminates the problem of ambiguity. I have no objection to the amendment offered by the distinguished Senator from Maine.

Mr. SIMPSON. Mr. President, may I add that in my mind I share the view that it certainly does not cure the defects in the proposal of the Senator from Maine. I certainly do not accept it on that basis. I think we are going to find in an up-or-down vote whether we accept that entire concept. I think it is important. I just want to say that, in my mind, it may be the terms used in it as to "relevant hazardous substances" and "exposed" still do not have the sound, scientific basis that is going to enable us to solve this really tough issue. From that standpoint, I accept it on that basis, but hope that we shall reject the entire concept later when we come to an up-or-down vote.

The PRESIDING OFFICER. Is there any other debate? If not, the question is on agreeing to the amendment.

The amendment (No. 673) was agreed to.

AMENDMENT NO. 674

(Purpose: To strike out section 129 (relating to victim assistance)

Mr. ROTH. Mr. President, I send an amendment to the desk on behalf of myself, Mr. Simpson, Mr. Helms, Mr. Denton, and Mr. Domenici and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. Roth], for himself, Mr. Simpson, Mr. Helms, and Mr. Denton, and Mr. Domenici proposes an amendment numbered 674.

Beginning on page 96, line 3, strike out through page 101, line 12.

Mr. ROTH. Madam President, I ask unanimous consent that Senator Domenici's name be added as a cosponsor.

The PRESIDING OFFICER (Mrs. Kassebaum). Without objection, it is so ordered.

Mr. ROTH. Madam President, my amendment would strike section 129 from the bill. At the outset, let the record be clear that I support reauthorization of Superfund and I shall vote for passage of S. 51 so that we can get on with the important task of cleaning up abandoned hazardous waste sites. I must, however, oppose section 129 as an unwise program which will divert funds and attention from the primary goal of the Superfund Program and create the potential, even the inevitability, of costing many billions of dollars in the future.

During the Environmental and Public Works Committee markup of Superfund held earlier this year, a Victims Assistance Demonstration Program—section 129—was included in the bill. The program was designed to provide grants of not less than $1 million, nor more than $10 million, each for not less than 5 nor more than 10 demonstration areas. These areas would be in 5 to 10 States and are selected on the basis of health assessments by the Agency for Toxic Substances and Disease Registry. The assessments would attempt to correlate disease or injury with a release of hazardous substance and consequent exposure. Persons residing in the experimental areas would be provided with free medical insurance policies that would cover continued medical monitoring. Persons showing present symptoms of such disease or injury would be reimbursed for past medical expenses and the costs of medical and surgical treatment and hospitalization resulting from such disease or injury, subject to an annual deductible of $500. The program was designed not to exceed $30 million per fiscal year.

Madam President, my colleagues and I in the Finance Committee had many concerns with section 129 of this bill, and after careful analysis of this concept, rejected it as fundamentally flawed and refused to authorized funds for the program. This program would seriously undermine Superfund's central purpose, which is the prompt cleanup of the hazardous waste sites, by adding on a major new National Health Care Program.

When Congress enacted Superfund in 1980, it recognized the pressing need for a program to cleanup hazardous waste sites. We are all firmly committed to this goal and I believe that the cleanup of hazardous waste sites would be most expeditiously and readily accomplished if Superfund is used exclusively for that purpose. By expanding Superfund to include a potentially very costly demonstration program, the limited resources would be diverted from the central purpose of cleaning up hazardous waste sites. This program, if expanded to a Nationwide Victims Compensation-Entitlement Program, would involve costs far beyond any current or potential funding capability of Superfund. It would require either substantial funding from general revenues or a dramatic increase in Superfund's tax base. If the Congress desires to create a Medical Assistance Program for individuals who have been placed at increased risk due to releases of hazardous substances, the large and uncontrollable financial costs of such a program require that that issue be considered separately.

I only point out at this point that even the present Superfund cleanup program is slowly taxing the revenue measures available for that purpose.

The Assistance Program was developed by its authors in good faith to remedy possible inadequacies in determining responspibility, to assign liability and to provide compensation in the case of exposure to hazardous wastes by a party. But product liability or worker compensation laws now provide redress in most of these cases. Recent data show that first-party insurance and tort benefit payments totalled $142.5 billion in 1981. Government payments for health and disability, in the same year, were $107.6 billion for almost 39 million beneficiaries. Health insurance issued by private companies covered 108 million persons in 1981.

The United States devotes an enormous, and still growing, proportion of its gross national product to the compensation of persons requiring medical care, rehabilitation, income replacement, and other monetary or other inkind compensation for injury, illness, or disease resulting from virtually any cause. Compensation systems readily available in the United States are the tort system, State and Federal workers' compensation systems, Medicare, Medicaid, Social Security disability insurance, black lung, employer-provided medical and disability insurance, and a variety of others. It appears that the combination of these resources is sufficient that any person suffering injury or illness in the United States will have his or her basic income or medical support needs addressed.

I believe everyone in this body, certainly the Senator from Delaware, has a great deal of sympathy for those potentially exposed to the effects of toxic wastes. We want to help. But the plain and simple fact is that the Treasury simply cannot afford the potentially gargantuan expenditures that his program is likely to incur. It is much much wiser to correct identifiable deficiencies in current legal institutions and other support systems to protect their respected values and control their costs than to attempt to achieve a national compensation system that may be beyond the Nation's current or future means.

This program does nothing to resolve the scientific uncertainties and causation controversies, which now exist, and need to be resolved before we even contemplate a compensation program of this magnitude.

It does not solve the problem of determining which cases of a particular illness may be caused by exposure to a hazardous release, nor does it distinguish between individuals whose exposure has been substantial and those whose exposure has been slight. The result is that for certain benefits—that is testing and screening—which by themselves are very costly, large segments of the population are likely to be eligible.

The demonstration program addresses symptoms that are present or are later developed. However, there is no adjustment for, nor recognition of normal incidences of disease symptoms, especially as the population ages. By the way that it is defined, the program opens up claims for potentially unlimited numbers and types of illnesses and thereby begins an open-minded entitlement program directed at only a few areas of the country, and I anticipate increasing pressure to expand the size and cast of the program.

Judging from the history of similar program that began with limited intentions, such as the Black Lung Program, it is difficult to imagine that those individuals not eligible because a site in their vicinity was not selected for the demonstration would accept their exclusion if they believe themselves to be otherwise deserving. In addition, it will reinforce the fear that living near a site can cause serious injury. Pressure to expand the program nationally is highly likely. I do not think that the Senate expected Superfund to become the precursor to a National Health Insurance Program.

Clearly the most disabling aspect of this program is that it creates a precedent for compensating persons linked to a hazardous substance, even when there is no credible evidence that the illness was in fact caused by the substance or that the individual was actually exposed.

Madam President, section 129 does not require a beneficiary to have been exposed to a hazardous substance, it eliminates dose as a relevant consideration, it substitutes association for causation, and it would entitle an individual to benefits for a significantly increased risk even where the underlying risk may be wholly insignificant. Establishing such a precedent could have serious implications for how the tort system and various administrative compensation programs deal with toxic exposure claims. Compensation would be awarded in an arbitrary and indefensible manner.

It is clear that no current or foreseeable funding level for Superfund could possibly cover the expenditure for such an expanded program.

For these reasons, enactment of section 129 could serve as an important first step toward a far more expansive entitlement-compensation program, with obvious and significant fiscal and policy implications. While I understand the sincere and deeply held concerns of the proponents of this provision, I believe that no need has been demonstrated for legislation that poses the grave risks and problems I have identified. I urge the Senate to delete the program.

Madam President, an editorial in the Washington Post of September 23, 1985, said:

> SUPERFUND AND THE SENATE
>
> Another bad provision sets up a "demonstration" program to provide compensation and services to people claiming injuries from environmental hazards. In fact, as a new study by a consortium of leading universities reports, at only one site is there now evidence supporting a link between exposure and serious health effects. Where such evidence exists, moreover, victims may already obtain relief in state courts.
>
> But widespread public fears—and the lack of a requirement that claimants prove their

> ailments were actually caused by the cited hazard—
>
> As an aside, Madam President, the modification does not correct that.
>
> Make it a near certainty that such a program would be met by huge demands for its expansion and continuation and would ultimately absorb most of the money meant to clean up potential hazards. The Finance Committee has already deleted funding authority for the program, but Sen. William Roth needs support on the floor to kill the program entirely.

Mr. ROTH. In closing, let me say, Madam President, I know the distinguished Senator from Maine is a compassionate and humane individual who seeks to address a serious problem, but one of the serious problems we are facing in the Finance Committee is financing the health programs already on the books. I can say, from several years of experience on that committee, that trying to contain those costs is near an impossible doing. So that at this time beginning a new program—and that is what this demonstration program amounts to, a new program—would make it very, very difficult to terminate at some future time.

I think it important to move on with the principal thrust of this legislation, that is, to clean up these sites, and to remove this diversion of funds and effort as proposed in this section.

I yield the floor.

Mr. SIMPSON. Madam President, the Senator from Delaware has beautifully stated the issue. It is a tough one, and it does not have anything to do with who is more compassionate or who is not, or who cares more or does not. Those are not parts of this debate.

I first thank the Senator from Maine, who on Friday extended me an extraordinary accommodation as I was in a long-standing commitment back in my home State of Wyoming and he was at full tilt in this body, working hard and working toward his measure. I asked him for accommodation in midafternoon, if I could leave and deal with my issue later, and I believe his phrase was something like, "You mean wait until you come back so you could help defeat my proposal?" I said, "Yes." He said, "I will." And I said, "Thank you very much," because that is surely above and beyond the call duty and the kind of comity that goes on in this place. I appreciate it very much.

The able Senator from Delaware [Mr. ROTH], with his sense of fiscal awareness and sanity, speaks with a sincerity and depth of authenticity on this issue that is so very real.

Superfund, I am one of the coauthors of Superfund—exceedingly complex, exceedingly difficult. I honestly say to you, Mr. President, I do not think there are 10 staff members in the Senate who really understand the issue, and perhaps fewer Senators, including this one. I do not leave myself out of that discussion—terribly complex. You correct one area of it and something springs up in another area. We wonder how to fight it, and we hope we can get it done. There are several amendments I think we can bring up or that will be brought up that will make Superfund do what it was supposed to do, and that is make those who produce the toxic waste clean it up and make them pay for it; we can put it together that way. But when we see the Superfund money going out for transaction costs, which often means attorneys' fees and scientific and technical information and knowledge, that is diversion. Here again I think is another diversion from Superfund, and that is this Victims' Assistance Program. It springs from the best of intent, there is no question about that. That is a given. But it springs from that with which we deal in this arena; we get to an issue which is very, very tough and rather unresolvable and yet pushes us, through compassion and intensity of care, to take care of people who somehow have suffered. From that comes impatience and often frustration and sometimes when we do that, the public perception of an issue is not quite correct as compared to reality.

The Mitchell proposal sets up a trial program at a total cost of some $30 million per year, as I understand the original proposal, and what we do is set up geographical areas. The Agency for Toxic Substance and Disease Control designates geographical areas within the States where health studies indicate the population has been placed at "significantly increased risk" because of exposure of the site and such disease is associated with exposure to a hazardous substance.

Under the Mitchell proposal, which Senator ROTH seeks to remove, persons are going to receive medical screening. They are going to get group medical benefits. They are going to have medical insurance which is intended to be nonduplicative with public and private benefits from other sources.

That sounds good, and it is good if you are compassionate and not using your own money. If you are using your own money, it does not sound good.

As one who has practiced law for 18 years, I say that the tort system of the United States is a very durable and well-recognized system. It comes down through centuries, literally. No one knows that better than the Senator from Wyoming, the Senator from Delaware, and the Senator from Maine, all of whom practiced law. The distinguished Senator from Maine not only practiced but also served on the Federal bench, and he knows those issues.

What we are faced with here is that we do not know enough. I know that this is where you run into the shoals, but we simply do not know enough about the nature of the illnesses and their specific connection with hazardous substances at the waste sites to make any reasoned judgments in these situations. It is even difficult, exceedingly difficult, to isolate a cause of cancer in the case of a specific person who would not even be involved in living near such a site.

I think it is important and topical that several days ago, the Universities Associated for Research and Education in Pathology, a group of universities, gathered together to report that its detailed look at health effects of waste sites on people living nearby indicated that there was very little information to indicate health effects on such individuals.

I know it is rather startling, but that is the kind of thing I found in dealing with the issue of agent orange, which is tough enough, also. Senator CRANSTON and I were able to put together a proposal about agent orange and waiting for the sound medical and scientific evidence before we do something out of impatience or frustration. The Senate was able to adopt our proposal by a vote of 95 to 0, and we resolved the agent orange issue at least to this point. It will come to revisit us again.

That report was fascinating. It was a detailed study of those living close to the hazardous waste sites. It was a report by very credible and fine universities. It was a review of health studies and investigations, and the conclusions basically stated:

> Critical reviews of 29 investigations of the health of populations in the vicinity of chemical disposal sites have confirmed that, with one exception, evidence for casual association with occurrence of disease is weak. These investigations can be termed suggestive at best. The absence of demonstrable effects on human health should not be taken as proof that no such effects exist, nor do positive associations necessarily prove that observed disease was caused by chemicals escaping from a site.

In my former capacity as chairman of the Veterans' Affairs Committee, in dealing with agent orange and "atomic" veterans and other compensation issues, it became clear to me that the Federal Government should not sponsor victims' compensation programs without sound medical and scientific evidence and a cause-and-effect relationship between an event and the disease—in other words, as in tort law, things like cause and effect. These are critically important things.

This report goes on to state that there is proof of no such causal linkage existing as of now. That linkage is what compensation systems are about. You either link it up or there is no pay. It is a simple procedure, critical and longstanding, and it is very much part of our legal structure. I think it would be very unfortunate to fund any kind of victims' assistance program, even a demonstration program, with that cause-and-effect linkage, and especially with this report.

The report goes on to conclude—and I guess this is the one we all know so well:

> There is a great disparity between public perception of the human health effects attributable to chemicals and disposal sites and the current scientific evidence on the subject.

So, in essence, that very fine report is saying that we know that each chemical disposal site is unique and that we all have in common the potential for contamination in the environment. However, we must have better information on the interactions between toxic chemicals and human tissues before we can fund a program that would eventually justify many of the programs we have that were done out of the best of reasons.

If we need a victims' assistance program, Congress will certainly deal with it. But the problem right now is not readily defined, nor is it large in scope.

I think that not only prudence but also conservative fiscal behavior is required.

I will share one other aspect of this. I do not see how it will ever stop at five demonstration States. Once the other States see that there is money, that will automatically attract the States of the United States. They seem to be attracted to that in everything else we do here.

If the problems associated with exposure are as great as the proponents of this legislation seem to believe—knowing them as I do, legislatively and personally—then the funding levels are obviously too low; because if it were not a problem, they would not be attempting to deal with it here.

Here we have a few States dealing with the program, able to take part in it. That could have some extraordinary and unfair effects. If we select five States as demonstration States, where 35 percent—or some such percent—of the population of the United States lives, the cost would be extraordinary indeed.

What are the justifications for providing special assistance for the people of one State while denying it to the other? I do not think it makes sense, on the basis of information we have today, to single out people living near waste sites for that kind of treatment, especially when the cause of disease in individuals is so exceedingly difficult, if not impossible, to untangle.

Should we, then, choose this group alone, some people at significant risk, and then wrap this extraordinary health system around them, an insurance system in which some things may be uninsurable? There may be risks which are uninsurable.

I am finding that on the Committee on Environment and Public Works, and I think Senator MITCHELL may be seeing it, too. We are presented with insurers who come before us and say, "We are not going to insure that risk anymore."

There are some on the committee who say, "Oh, yes, you are."

Then they say: "No. We are not a charity; and if we do not have actuarial soundness and assumption of known risk, we will not insure."

We are finding that all over the United States. It is nice to say, "Here is a risk, and you will insure it," but the insurance companies are not going to do that; and the reason they are not going to do that is that they are business and not charities.

So this is a way where we are slowly coming around to that need and some type of Federal supportive insurance system.

The real problem is this: How can we possibly compensate this basis, as this proposal of victims' compensation is presented to us, when we cannot even tell how the person who leads the good life, if you will, contracts cancer or dies or is disabled or has some rare disease or some hideous malady?

It is not something we can show through his diet or his exercise or his rest or his family history and yet he goes. He disappears. He dies, and we do not know why. Yet he led an exemplary life in an environmental surrounding.

If we cannot do that with a person in that situation, how in heaven's name are we going to be able to do that here, and especially when we see that the perception is so different from the reality?

I have greatly enjoyed working with Senator MITCHELL. He is one of the extraordinarily adept and bright people in this place, and it has been a privilege to do that. We have worked together on things. We have worked together on language here. The language here is greatly improved. He is a most extraordinarily cooperative individual.

Madam President, I indicate to you that it was a little bit easier for us to deal with agent orange—I know that sounds strange—because we set out in that measure that we would deal with sound medical and scientific fact.

Here the scientific questions are so tangled that we have little room to hope for any reasonable link between exposure to a waste site and individual illness.

I think we have to continue to get new information on these sound questions of science through research. We have to consider the dangers from waste sites in the broader picture of our national health, including workplace exposure, dietary factors, lifestyles, those things I suggested.

Then I would wind down and share with you that I indeed think that this will open the way to new compensation systems.

The black lung issue was something before us. We were told that it would cost us $350 million during the life of the program, and black lung today costs us $11.5 billion, and, of course, if you try to change that or modify it or correct it, you are portrayed as an uncaring, evil fellow. Then I had one of my constituents in Wyoming—I want to share with you—that had his black lung taken away from him, who wrote me a very irate letter. He had worked for the Union Pacific Railroad, but he had forgotten to indicate he worked in the Union Pacific Railroad mercantile store. He had never worked in the Union Pacific coal mines. When he was told he could not have his black lung and it would be taken back, he was irate.

Well, I lost one constituent there because he said, "You are going to get that money for me," and I said, "No, it went to people who worked in coal."

He said, "Well, I did. I worked in the mercantile store and that was in the same community."

I do not know how many are in the black lung issue like that, but we do not have very good luck in shutting anything down in those areas or we would not have an $11.5 billion black lung, and I do a great deal of that case work on black lung in my State, because we have had people who were very deeply injured as a result of working in the mines and they should be compensated, but not those who worked in the mercantile store. We did not have that in mind.

The longshoremen's compensation system started at $5 million and now it costs us almost one-half of a billion dollars to take care of the longshoremen's compensation issue.

I am going to wind down, but first share with you one thing that I think if you want a classic example on the books, if you really want to look at one—and I know that I will be visited by three spirits when I finish this—I can tell you to look at title 38 under veterans' benefits and see what has happened with the thing called presumptive diseases. I have not one whit of regret in supporting the veterans of this country with whatever they require. I think we should take care of the service-connected disabled in this country and those who served in combat and give them anything they need. But what I have a lot of problems with is seeing some 40 percent of the disabled veterans in this country—and to be disabled you need only have served for 90 days, 90 days or more during a period of war, regardless of whether you were in the combat theater or where—and 40 percent of those disabilities are 10 percent disabled individuals. They cost us $58.6 million a month in fiscal year 1985 compensation benefit payments, and they have to do with flat feet, hammer toes, and other things such as that.

We think of compensation, I think, as due to someone who was involved in combat, and I say whatever it takes, just do it. But the presumptive diseases came from this same frustration, the same frustration we are dealing with here, because here they are, and let me just read a couple or three to you. Remember now that in the case of any veteran who served for 90 days, 90 days or more, that is all—you could have been out after 4 months and you would be receiving the green check for 30 or 40 years, and then we go back into the statute and here is what we have added over the years to the chronic disease list. Now, understand it is presumed that these were caused by being in the service of the United States—chronic diseases become manifest to a degree of 10 percent or more within 1 year from the date of separation from such service, and it goes on to list anemia, arteriosclerosis, arthritis, muscular atrophy, brain hemorrhage, brain thrombosis, cirrhosis of the liver, diabetes, encephalitis, endocarditis, epilepsies, Hansen's disease, Hodgkin's disease—which appears in the general population in a wretched percentage, but being on this list means it was presumed that you contracted that by serving in the U.S. armed services within the periods as set out—leukemia, myocarditis, organic diseases of the nervous system, palsy, psychoses, Raynaud's disease, scleroderma, sclerosis, thromboangiitis, tuberculosis, tumors, ulcers—peptic, gastric or duodenal—and other diseases as well.

Those are presumptive diseases that were caused or came about through service to our country. That is what happened to that compensation system.

I have said, and not to be raging or evil, that we should look into that list, and when I do that the mailroom breaks down—I can tell you that.

But if we are honest with ourselves, then let us look at a $26 billion budget.

in the Veterans' Administration, and that is what it is, and over two-thirds of it goes to the dependency and indemnity and compensation systems, and the remaining one-third approximately to the health care system, which is a crackerjack health care system—I have no qualm about that. Pay it, do it, but for Heaven's sake, out of impatience let us just not add to the list and out of our impatience and frustration let us not add an entirely new victim's compensation in the United States and pay for it out of Superfund.

And when we get to a disease that is a grotesque disease or malady, is it going to be caused by one of the people or one of the groups that provide feedstocks? Our present tax is a feedstock tax. I do not know what we are going to do if we change that to waste-end tax or value added tax. I think that is worth pursuing. But right now it is feedstocks. Are we to say that something caused there by that product is then commensable and paid for by them, even though it may be something that does not have anything to do with that? That is where we are headed with something paid for out of Superfund.

So, Madam President, I think even though it is an exceedingly good-faith effort by a very fine legislator, and I have not the slightest qualm about that, I say to you that I think it is an adventure that we dare not enter into. It will obviously never end, and to open this one in an area where if you live near a place of relevant hazardous substance and then the definitions are there, I fear that that compensation obviously will never stop, and the critical part is it does not fit. We are not able to tie it together legally, and that is our frustration. But I think it opens to an extraordinary thing where we see Superfund which was put on the books to make people correct the difficulties and the problems by the toxic waste they generate, make them clean it up, make them pay for it, and now to come into a compensation system out of Superfund. I know it is going to do one thing. It is going to drain away the ability to cleanup the sites.

There is a lot of discussion about the fact we do not move fast enough on Superfund, we are not getting our work done, and we have to speed it up; and that is true.

But we are going to get into a situation where we are going to be dealing with "where is the money coming from?" Maybe we will divert it to the general fund. Maybe we will divert it to Superfund. Maybe we will get the value-added tax, and I am sure there will be new and creative ways to pay for the compensation.

But, I say to you, regardless how creative we get, we are going to pay a bundle and we are going to pay a bundle for it on the basis of frustration, inexactness, and emotion as to exactly what we are doing and, more importantly to any thoughtful person, an inability to tie it together with cause and effort.

Remember, finally, we do not deny anybody the right to go to court and get compensation. If you have been seriously affected or injured or diseased by a hazardous substance, you go to court and you prove it and you get compensated. That is the law of the United States.

So the reason we are going to this again is obviously not that reason. It comes from the critical issue of: "But you have not decided. You have got to decide and, since you cannot decide, compensate."

I think that is a very poor way to start a compensation system, which I think will drain the resources, whether it is Superfund or the Treasury of the United States. That one will take us the road of Medicare and Medicaid with oak leaf clusters. We were told, you recall, in the debate on Medicare and Medicaid, that Medicaid and Medicare would cost us $7 billion by the year 1990, and that little program is costing us $90 billion in the year 1985. And every time we try to touch it, the mailroom breaks down. That is where we are headed with this one.

Mr. STAFFORD. Madam President, I notice my good friend, the most able Senator from Wyoming, began with mentioning that three of our colleagues who are here are all members of the legal profession. I cannot resist pointing out that I make no claim for this, but I also am a member of that profession, having practiced actively, with two interruptions for military service, from 1938 until 1961. During part of the course of that experience, I was elected an attorney general of my State. Occasionally, I have to confess, we did things as attorneys general which rose to haunt us later on.

I recall on one occasion I wrote an opinion I thought was correct for the then Governor of the State. A few years later, when I had a pet program I was about to ask the legislature to consider, the then attorney general who had succeeded me, called me up and said, "Governor, we think what you want is unconstitutional." So I told the attorney general that he better come up and show me why he thought it was unconstitutional.

When he arrived in my office, somewhat out of breath, he said that he had an opinion from a court in New Hampshire which said a proposal like it was unconstitutional, and he also had an opinion by the attorney general of Vermont which suggested it was unconstitutional. I said, "Would you mind telling me what damn fool wrote that opinion?" He said, "Some damn fool whose initials are R.T.S."

So the long and short of it is we are not always right as lawyers, and I had to forgo asking the legislature to do what I had hoped they would, which means that even today we are not always right in our concerns about the future of a program.

I simply want to say, as chairman of the committee involved, that this part of the bill which is now subject to the Roth motion to strike, or amendment which would have the effect of striking it, was accepted this year by the committee, it is my recollection, without manifest opposition. It is part of the bill and I feel, as the committee chairman, constrained to defend it.

But I will propose to speak briefly during the consideration on this bill tomorrow rather than this afternoon. I simply wanted my colleagues who are here to know that I do have the intention to speak on this amendment tomorrow afternoon.

I yield the floor.

Mr. HELMS. Mr. President, I strongly support Senator ROTH's amendment to delete section 129, the Victim Assistance Program, from S. 51. I am happy to consponsor this amendment.

Mr. President, under section 129, the EPA will choose 5 to 10 geographical areas which it believes are increased risk areas due to hazardous substance releases. These areas will participate in a 5-year medical program providing medical screening and treatment. Superfund will pick up the tab if the responsible parties have not undertaken to pay.

Under the bill, two forms of medical assistance are available. For persons without any symptoms, a secondary group medical benefits policy will provide for periodic medical screening. For those persons who have symptons of such a disease or injury, under section 129, the State will provide a secondary group medical benefits policy to cover costs of treatment. Individuals in this category will also receive from the State program reimbursement for past medical costs associated with that illness if not paid by any other source.

Mr. President, I realize that the Senate Committee on Finance refused to provide the $30 million requested. Nonetheless, we must eliminate the language from the bill so that neither this Congress nor any other Congress can fund this program.

Mr. President, I oppose section 129 for several reasons. First, medical research just does not legitimize establishing this program. There is no evidence showing a widespread pattern of significant chronic illness caused by exposure to hazardous waste disposal sites. Additionally, if causation does exist, there is no evidence that the illnesses cannot be compensated appropriately through traditional liability. Mr. President, if this Victims' Assistance Program does become law, the end result will be an open-ended medical entitlement program based on need and not based on liability.

In addition, this program should, if it does not already, attract criticism from the environmentalists. This program would only divert substantial funds from cleanup efforts, impeding Superfund's goal of cleaning up hazardous waste sites.

Simply put, the U.S. taxpayer just cannot afford this program. The Victims' Assistance Program will follow the same course as the Black Lung Program.

The Black Lung Program was established in 1969 to:

> Provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis (30 U.S.C. Section 901 (1969)).

The Black Lung Program was supposed to be a one-time program, terminating in 1976 with an estimated cost of $350 million. Contrary to this intent and these projections, the Black Lung Program has ballooned to a program that in 1981 compensated some 460,000 individuals, more than twice the number of coal miners employed at that time, with a cost to the American taxpayer of $11.5 billion, a cost more than 30 times the initial cost projection.

The American public cannot bear the financial burden of the cost of additional programs such as the Victims' Assistance Program in S. 51.

Mr. President, establishing a program of this nature brings us even closer to national health insurance. I pose the same question that Senator SIMPSON did in his remarks found in the committee report on S. 51:

> Should we as a society allocate resources to compensate individuals above and beyond what is generally available solely because they are singled out on the basis of political muscle or immediate public concern?

Mr. President, my answer is a resounding "No."

Mr. President, I commend the Senator from Delaware for introducing this amendment and I urge my colleagues to join me in cosponsoring this measure.

Mr. MITCHELL. Madam President, I thank the distinguished chairman of the Committee on Environment and Public Works for his comments today. He has been a strong leader on the entire Superfund Program and specifically on the Victim Assistance Demonstration Program, and I welcome and value his support.

Having listened carefully to the comments of my two good friends, the Senator from Delaware and the Senator from Wyoming, I have heard about the Black Lung Program, I have heard about the Longshoremen's Compensation Program, I have heard about the Veterans Program, and I have heard a lot about what this program before us might someday be, but I will be darned, after listening to them, if I could tell anything about what this program is. Most conspicuously lacking from their comments was any description whatsoever of what is actually in the legislation before us, how it works, and what it was intended to accomplish.

And so, before responding to some of the specific comments that they made, I would like to put this matter in some historic perspective, describe how we got to where we are today and, most importantly, provide some information on what is actually in this legislation.

Five years ago, Congress began to deal with the problems arising from the indiscriminate use and disposal of hazardous waste in our country for the preceding several decades by enacting what has come to be known as the Superfund law. As originally reported out of the Senate Committee on the Environment and Public Works in 1980, the legislation contained a full-scale national program for compensation of individual victims—human beings who suffered disease or injury as a result of hazardous waste discharges or release.

It was later in the year when we got to the bill, the so-called after-election session, and the opponents of the legislation threatened a filibuster. Many of the same groups who are now opposed to this provision, lobbying vigorously against it, then encouraged a filibuster in opposition to the entire program. And so, in a compromise, the provision regarding victim compensation in that bill was deleted on the floor under threat of filibuster in response to the argument then being made that we do not know enough about the problem. That is what was said, words which we heard exactly verbatim again here today. "We don't know enough about the problem. Instead of having a national program, let us have a study," the opponents said, "to determine whether or not a national program was necessary."

And, as a result, the National Victims Assistance Program was deleted from the bill and in its place a study was mandated. The legislation said that the study should deal with "The adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment."

The study was conducted by a group of four major independent legal organizations, and its conclusion was following a very comprehensive study and a very detailed report, which states:

> This review of existing causes of action and barriers to recovery has shown that all those causes of action do exist for some plaintiffs. Under some circumstances a private litigant faces substantial substantive and procedural barriers in an action to recover damages for personal injury due to hazardous waste, particularly where the individual claims are relatively small.

To hear the remarks today one

would not think that a study had ever been conducted when in fact a detailed study was conducted and the authors of that report—including some attorneys who represent some of the companies who now oppose this legislation—recommended a national compensation program for medical expenses and lost wages to be administered by the States.

This legislation, this pilot program, does not fully implement that recommendation. It does not even come close to it. But the study told us what every lawyer in this Senate and what every lawyer in this country knows and knew before the study was conducted: that where you have families of limited means, poor people who suffered disease or injury as a result of these cases—hazardous releases—there are enormous barriers to recovery. So the easy statement made here—well, they can go into State court and sue—does not deal with the real problem. Anyone who doubts there is a problem ought to review the record of the hearings before the Senate Committee on the Environment where several days and many witnesses substantiated the conclusion of the study group regarding the need for action in this area.

I do not suggest that all of the questions in this area have been answered, or that we ought not to study the matter further. They have not all been answered, and we must study the matter further. But the cries for more information have a hollow ring to them and an empty sound when they come in opposition to a program whose very purpose is to obtain that information to help us judge the extent of the problem, the depth of the need, and whether or not we can in fact deal with it in an effective way. And the one thing about all of the other programs that my friends have alluded to in an effort to kill this program on a guilt-by-association basis is that not one of them—not one of them—was preceded by a limited pilot program such as is proposed here. Perhaps if we had done that in those cases we would not have the situation so decried by the opponents of this provision.

So, the first point the Members of the Senate ought to understand is that there was mandated by the 1980 law a detailed comprehensive study by four independent legal groups. They were not paid by the proponents or the opponents. And they concluded that some action is necessary, and they proposed a full-scale compensation program far beyond what this limited bill provides.

The second point is that this is a limited pilot program, limited in scope, limited in funds, and limited in time. And all of the statements made about what it might otherwise become have nothing to do with what this measure now contains. How would it work?

The first point to remember is that under the bill now before us—unrelated to the Victim Assistance Program—a health assessment study must be conducted at each of the national priority sites. So when the Senator from Wyoming says that the Agency for Toxic Substances will set up geographic areas, it should be made clear that it is mandated in the bill independent of this Victim Assistance Program. That occurs in any event. Someone need only look at section 116 of the bill to read that the administrator "shall perform" a health assessment for each release, threatened release or facility on the national priority list established under section 105. That is the first step—the health assessment which is performed in any event under this legislation whether there is or is not a victim assistance program.

The second step after that health assessment is conducted is to look to the results for each of the areas where it has been conducted. And, if that health assessment by the Agency for Toxic Substances demonstrates three things, then the matter is further considered. So this is the second step, and the three things are: first, that there is a disease or injury for which the population of the area is placed at significantly increased risk as a result of a release of a hazardous substance, the area I remind my colleagues having previously been defined as part of a study conducted independent of this part of the bill; second, that such disease or injury has been demonstrated by peer review studies to be associated using sound scientific and medical criteria with exposure to a hazardous substance; and third, that the geographical area contains individuals within the population who have been exposed to a hazardous substance in the release.

So after the study is conducted, it is reviewed to determine whether all three of these criteria are present—a disease or injury for which the population is at significantly increased risk as a result of a release of a hazardous substance, that disease or injury having been associated with that substance by peer review medical studies using sound, scientific and medical criteria—and there are people in the area who have been exposed to that hazardous substance. That still does not qualify anybody for anything but it is the next step in the process, a process I digress to add that has been sorely lacking in this field because for the past 5 years as a result of the actions of the people who opposed this provision in 1980, many of the same groups and organizations and individuals who oppose it now we have had operate in this country a law which has said that if certain public resources—a tree, a lawn, or a river—are injured by a hazardous release, and a human being is injured by the same release, the owner of the property, if it is a public entity, can recover for damage to the tree or the lawn or the river but the human being cannot recover for injury to that human being.

What kind of a standard is that? What kind of a priority is that that places injury to things in a higher priority than injury to human beings? Yet, that is the law today. That has been the law for 5 years. I say it is time that was changed.

After studies are conducted, and if, and only if, the area meets the three criteria I have pointed out, then the State involved may nominate that area to the President and the Environmental Agency for inclusion in this trial program. A decision as to whether or not a particular area will be included is left to the sole discretion of the President or to the person to whom the President delegates the responsibility. Under the bill, not less than 5 nor more than 10 areas of the country will be selected by the President using criteria set up in the bill regarding the experience of the State in dealing with this problem of hazardous waste cleanup and other criteria.

Therefore, 5 to 10 areas in the United States will be selected for this pilot program in an effort to determine whether something can be done to determine whether we can develop the experience and information necessary to justify proceeding in this area.

Each State will operate its program as it sees fit. What the bill provides are three minimum elements that a State program must include. What are the benefits under this bill which, to hear the opponents of the provision speak, will soon lead to wild excesses?

The first thing that will occur is that persons in the area who have been exposed to hazardous waste release, a hazardous substance release—which, as I remind my colleagues, will already have to have been determined with medical peer review studies to be associated with the disease or injury with respect to which the people of that area are at significantly increased risk—will receive a medical examination to determine whether or not they suffer from the disease or injury.

For those persons who have been exposed and who receive an examination and for whom the examination hopefully demonstrates no symptoms, they will then receive, as part of a group medical benefits insurance policy, the benefit of paying for future tests for the same purpose.

So you have one category of people who have been exposed, who receive a test, with no symptoms. All they get is a group health policy that pays for the cost of future medical examinations.

For the other category of persons whose symptoms are demonstrated as a result of the examination, they will receive reimbursement of past out-of-pocket medical expenses, their actual medical expenses that they paid for treatment for this disease or injury. They will be reimbursed and they will also get a group health insurance policy that will pay the cost of such expenses in the future.

That it it. No lost wages, no pain and suffering, no transportation. All out-of-pocket medical expenses and the costs of medical tests. That is all that can be provided under this pilot program.

In addition, the benefits under these policies must be secondary to any other form of insurance coverage, public or private. If any person so exposed and having such symptoms has private health insurance, they cannot recover under this program, of if they have some form of public health reimbursement that covers it they cannot recover here. This is limited only to those persons who have no other form of insurance. To make certain that people do not cancel their private policy in order to be eligible for this, the date on which coverage is determined is 30 days before the State even applies for participation in the program.

Furthermore, if anyone of those persons does, in fact, go to court to bring a suit and recover anything, they have to pay back the program.

So the benefits are very limited: Medical examination and actual cost of medical expenses for treatment of the disease or injury secondary to any other form of insurance, and must be repaid from any form of recovery.

That is the program. It bears no resemblance to the rhetoric that has been used to describe what it may become.

I must say that I am indebted to the Senator from Wyoming with whom I and my staff work very closely in the Environment Committee, and who made several constructive suggestions regarding limiting the scope of this program. I accepted, I believe, if memory serves correctly, every suggestion that he made, adding others that came from other sources, including some of the opponents of the legislation and others that I suggested on my own as we honed and narrowed this down to try to make it free of the possibility of abuse.

I was, of course, disappointed that the Senator from Wyoming could not see fit to support it, but I certainly understand and respect his position.

Now let me deal with some of the statements which have been made here today.

First, we all know that the way to indict something is to describe it in an unpopular fashion. Over and over again in the Environment Committee, in the Finance Committee, in private meetings, and here today we have heard this described as an entitlement program.

The Senator from Delaware used the word "entitlement" three times in his comments. It could lead, he said, to a nationwide entitlement program, an open-ended entitlement program, an expansive entitlement program.

I will say to my friends that this is not an entitlement program, not by any stretch of the imagination, but if that is an issue to them, I have an amendment which I would be pleased to offer. I know the Senators will agree to this because they made it clear they do not want an entitlement program. This amendment will read:

> The program authorized by this subsection shall not operate as a program of entitlement and no person shall be deemed entitled to any benefits under any program established by a State under this subsection.

If we adopt that, I hope we will have heard for the last time the false charge that this is an entitlement program.

Fundamentally, the opponents of this provision advance two arguments, and they are inherently contradictory. On the one hand we are told there is not any need for this. A recent study was cited—and I will get to that in a moment—to demonstrate that. On the other hand, we are told it will be too costly.

Of course, if there is no need for it, it will not be too costly. On the other hand, if it will be too costly, then there has to be some need for it.

The fact of the matter is that this is a very limited, attempted, responsible, and sincere effort to try to get information to see whether we could demonstrate through a pragmatic, specific program whether or not there is a need and, if there is, whether it can be met in a responsible, limited way.

In support of the contention that there is no need for this, a so-called recent independent study has been cited. In his remarks, the Senator from Delaware quoted from a Washington Post editorial of today which referred to that study; in his remarks, the Senator from Wyoming quoted from the study itself. I submit to the Senate that the Washington Post editorial was incomplete, erroneous, and misleading in its reference to this study and the comments made here today were very selective in the portions of the study which were quoted.

The first point that ought to be made, which has been made, is that it ought to be on the record who pays for the study. It is a relevant fact for those who are to determine this issue to know that the study now being used to defeat this program was paid for by those who are opposed to the program. That does not necessarily, in and of itself, invalidate the study, but it is a relevant fact that ought to be known by those who are voting on it, and the Washington Post this morning conspicuously omitted any reference to that fact.

Before I make some comments on

the study. Madam President, I ask unanimous consent that a comprehensive critique of the study conducted by the Environmental Defense Fund be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

[Mr. DOMENICI assumed the Chair.]

Mr. MITCHELL. Mr. President, the study has been used to support the contention that there is only evidence of a serious problem at one site. The implication is, therefore, that there is not really a problem and we do not need this program. That is clearly the implication and the intention of the Washington Post editorial this morning. But what in fact did the study involve and what did it conclude?

The first point to be made is that there are 850 sites on the Superfund's national priority list. This study, which did not involve any independent investigation at all by the study group and the authors of the report but, rather, merely a review of such reports made by others, was limited to studies of human populations at just over 20 of those 850 sites.

The first point to note is that the study was performed on a tiny fraction of the total number of sites. And even there, even on the sites that were looked at, the study group itself concluded that the information was extremely limited.

This is a copy of the press release announcing the results of the study. The following words appear on the very first page of that press release.

"The panel cautioned, however, that its findings should not be interpreted to mean that there were no risks of health effects from these sites or that health effects had not occurred. Data related to health effects for most of the sites on EPA's national priority list are inadequate or nonexistent," the panel reported.

Since the Members of the Senate have been treated to selected portions of the study, let me balance that by reading selected portions on the other side of the question from the same study, which could lead one to the opposite conclusion of that advanced by the proponents of this provision.

> Based on a comprehensive search of available data, the Executive Scientific Panel has found few published scientific reports of health effects clearly attributable to chemicals from disposal sites. These results are not surprising, given the many technical difficulties inherent in establishing cause and effect relationships in such situations. However, they cannot be interpreted to indicate that no risk exists, but, rather, that no serious health effects clearly attributable to the sites have been detected by the study methods employed.

A separate section:

> The panel has concluded that a number of chemical disposal sites contain substantial quantities of toxic substances, some of which migrate from the sites and result in human exposure, and have the potential to cause serious, irreversible, or even fatal illness if exposure is substantial or prolonged.

Another section:

> Thus it would be premature to assess any future long-term effects of past disposal practices based only on the criterion of health effects observed to date.

Another section:

> Although solid evidence for serious health effects caused by chemicals from disposal sites is generally lacking, it is clear that a substantial risk is presented by many sites. Their contents, construction, and location favor pollution of air, water, and soil, which may ultimately result in human exposure.

And another section:

> Thus, public and private decisions require selection of priorities for remedial action and use of methods that are still being developed or improved. However, the Panel holds that the potential for human health effects is a major criterion for priority attention in remedial action. Attention to cleanup or reduction of health hazards cannot wait for demonstration of human health effcts. The Panel concludes that greater understadning of the potential of candidate sites to affect human health will contribute to the soundness of the decisions on risk management that must be made.

I submit to the Members of the Senate that anyone who takes the time to read this entire report—the entire report—will conclude that, after study of the legislation now before us, the report supports retention in the bill of the Victim Assistance Demonstration Program, rather than the contrary. None of that—none of that—was clear from the Washington Post editorial, as intellectually dishonest a comment on important legislation at a critical time—just before it is voted on—as I have seen in a major newspaper, because this provision is, in fact, intended to acquire the experience and information necessary to know whether to proceed and if so, how to proceed.

Make no mistake about it, Mr. President, those who are opposed to this provision are opposed to doing anything in this area, because if this is not enacted, nothing is going to happen. We have had hearings time and time again in the past 5 years; we have had studies to which I have offered. And the time for taking this limited step is now. Superfund will be reauthorized. It will continue for another 5 years, and there is no prospect of legislation in this critical area after that has occurred until the next reauthorization, which is 5 years in the future.

The comments made most frequently by the opponents over and over again attempt to relate to the Black Lung Program. I was not here when the Black Lung Program was created, but I say to my colleagues, if that program is as bad as you say it is, why do you introduce legislation to improve it in the manner you suggest? And if the veterans' program, the presumptive disease section, is as bad as my distinguished colleague from Wyoming says it is, the former chairman of the Veterans' Affairs Committee, why does he not introduce legislation to deal with that?

Mr. SIMPSON. Mr. President, will the Senator yield for a moment?

Mr. MITCHELL. Yes.

Mr. SIMPSON. Will the Senator from Maine join me in those efforts?

Mr. MITCHELL. No, because I do not agree with the Senator.

Mr. MITCHELL. I am not the one making the argument, the Senator is. I ask the Members of the Senate to keep in mind that this is not the veterans' program, this is not the Black Lung Program, and this is not the longshoremen's program. This is a separate issue, an effort to do what was not done in those cases, to have a limited test program on which no more than the maximum amount stated in the bill can be spent during the next 5 years, $30 million for 5 years, a total of $150 million. Not one penny more than that can be spent or will be spent. After that 5-year period and after the reports which the bill requires the President to make, then the Congress can review the situation and make a judgment as to whether there is in fact a problem, whether this is a responsible approach to the problem or whether it should be dealt with in some other fashion.

It is I think a terrible indictment of the Congress to suggest that if you have a pilot program, you then must inevitably have a full-scale program. I reject that approach and I say that I frankly will wait until we get the results of this program's experience to determine how much further, if at all, we should go.

If the opponents are right, that there is not a need, if that is demonstrated through the study, then I will join them in urging that there be no further action. If this is not ensurable, as the Senator from Wyoming has suggested, then we will find that out and this program will not go into effect. But I do not think we should prejudge a pilot program. I do not think we should prejudge a test by saying it will inevitably produce a certain result and, therefore, we ought not to have a pilot program. The very purpose is to find out whether or not there is a genuine need and whether or not there is an appropriate, responsible way to deal with that need.

The Senator from Wyoming is correct—he said it many times and I agree with him—we cannot legislate national programs on the basis of emotion or the anecdotal evidence that comes before us in committee hearings. It is not sufficient to hear from even dozens of individual citizens whose lives have been disrupted, children lost their lives or suffered disease, or the other tragic experiences that we have heard in testimony before the committee. That standing alone is not enough to justify need. We have to find out if the need goes beyond that, whether those are truly extraordinary cases, not representative of the population, or whether in fact the reverse is true. But I hope the Senator will agree that at the very least those are factors which can and must be considered and that human suffering under these circumstances is something we ought not to turn away from merely because some other programs have not operated in the manner we think appropriate. And so I ask only that we take this limited, responsible step to try to see, is there in fact a serious national problem? And if there is, is this an appropriate, responsible way to deal with it. Absent this type of pilot program, a limited test program, we will not know the answers to those questions and we could be turning our backs on a very serious human problem.

Mr. President, I yield the floor at this time.

EXHIBIT 1

COMMENTS OF THE ENVIRONMENTAL DEFENSE FUND ON "HEALTH ASPECTS OF THE DISPOSAL OF WASTE CHEMICALS"

[Graphs and charts mentioned in article not reproducible in the RECORD.]

(Either we are going to have to change the toxic chemical waste dump sites or we are going to have to change epidemiology.—Selikoff, 1981)

1. INTRODUCTION

The Environmental Defense Fund shares with the Chemical Manufacturers Association, the sponsors of the UAREP study, an appreciation that the health aspects of the disposal of waste chemicals are of critical importance to public policy, justice and public health (see, for example, our joint sponsorship of a symposium on this topic at the 1984 AAAS annual meeting). We therefore commend the Chemical Manufacturer's Association for sponsoring this effort by UAREP to produce a comprehensive review of the present state of knowledge on the subject. We remain concerned about the venue and sponsorship of this review, as stated in earlier correspondence between UAREP and EDF, among others (attached). Our comments are based upon our extensive involvement with citizens in hazardous waste dumpsite communities as well as our communications with health scientists involved in the investigation of associations between chemicals from hazardous waste dumpsites and adverse health effects.

In the context of Congressional reauthorization of the Superfund law this next session, UAREP's report will play a significant role. This document also comes into existence in the context of judicial oversight of the health-related activities of HHS and EPA under Superfund, resulting from litigation brought by EDF and CMA. Thus, there are many parties interested in an evaluation of the efforts to determine health effects of hazardous waste. In the broader context, this project relates not only to the existence, or lack of existence of such effects, but also to the appropriate methods for determining these effects or their lack and to the very definition of causality for purposes of judicial and regulatory remediation of damages. Because the UAREP report is not simply a summary of present health effects research, but is also a guide for devising future research and perhaps, more importantly, for determining public policy, it is critical to identify and critique flaws in the UAREP study. Nevertheless, despite the negative import of our comments, EDF wishes to be on record as commending CMA and UAREP for their commitment to this project, amounting to almost $1 million in expenditure and over a year of research effort.

2. SCOPE OF UAREP REVIEW

The UAREP study reviewed 26 studies at 18 sites conducted by federal and local government and by academic groups. It should be noted that of the site-specific studies listed in Appendix I, five of them actually concern incidents of environmental contamination from smelters and occupational exposures not directly related to hazardous waste dumpsites. This is noted to indicate that the real number of relevant health effects studies is very few.

These studies fall into a similar typology of experimental design. They are almost all cross-sectional or cohort studies. That is, in these health effects studies, the population under consideration is divided into exposed and unexposed groups, (or, as in the case of the lead smelter studies, into relatively more and relatively less exposed groups) and then investigated for a relatively limited time as to the prevalence of disease or rate of mortality from specific causes.

Most of the studies looked for only the most serious health endpoints, specifically incidence of death, or morphological birth defects. None of the studies examined the entire medical history of persons potentially exposed. Very few studies attempted to collect data on the broad range of health status, beyond clinically defined or hospitalizable diseases. Some studies—such as the California Fairchild study—use only hospital records; others have combined personal interviews with clinical examinations (Missouri dioxin study) or with records follow-up (interviews with physicians, asertainment of hospital records).

The size of the populations studies varies, but was mostly under 100. The statistical analyses used to determine significance have been relatively straightforward: comparison of means, comparison of relative rates of incidence, or analysis of variance. Although some studies have collected data on temporal bases (e.g., Vianna's study of birth weight in Love Canal (see below)), no study has applied statistical time trend analyses to the analysis of data.

3. UAREP CONCLUSIONS

The UAREP study reaches three general conclusions:

No study has demonstrated conclusively a connection between exposure to hazardous chemicals from dumpsites and serious effects on human health;

All studies have been adversely affected by the climate of public concern and suspicion in these communities;

Future studies should be undertaken using standardized protocols and approaches, which should be registered for consultation in a central repository coordinated by CDC.

Within the text of the document, several more specific recommendations and conclusions are also proposed. Some of these are:

1. development of techniques to measure exposure and early biological response;
2. expansion of the toxicology data base, particularly on mutagens;
3. increased nation-wide surveillance of

birth defects;

4. research on methods to detect immunologic and neuropsychiatric effects;

5. research on the sociological dimensions of community response to hazardous waste contamination.

The UAREP study makes a major policy recommendation with which EDF concurs. The study concedes that the job of identifying and remediating hazardous waste dumpsites should proceed expeditiously "without waiting for health effects to appear" (i-24). EDF agrees with this conclusion; it is consistent with our position regarding the use of epidemiology in all environmental regulations. (See also, Lilienfeld, A. (1983) "Practical limitations of epidemiological methods". *Envir. Health Persp.* 52:3). At best epidemiological research provides confirmatory evidence of great importance to regulation. Its results can be used to identify categories of health effects in which environmental factors may play significant etiologic roles. However, epidemiology cannot be used to set specific environmental standards or to prioritize issues for regulation because its data are collected too slowly and with too little precision. Moreover, fundamentally, epidemiology cannot be used to guide truly protective environmental policy or preventive public health program, because it only reveals the existence of a health hazard after the occurrence of significant damage to human health.

4. EDF CRITIQUE

EDF finds the major conclusions of the UAREP study inadequate. The primary focus of our comments today is on the scientific adequacy of the draft report; in addition, we note that there are serious implications of the report for public policy and future research, particularly as noted in the executive summary, which are based upon an oversimplification of the problems besetting the reviewed studies in terms of design and interpretation.

Within the document the conclusions are discussed in most cases with appropriate recognition of the very few actual studies which were available for UAREP review and the limitations of the studies. Unfortunately, less qualified statements in the executive summary are likely to have greater impact on the public and on policymakers. For instance, one statement which will undoubtedly be extracted from the report, as has already appeared in reports in the media, is that "the available data suggest that human exposures in general have been of insufficient duration and intensity to have resulted in observable health effects" (p. i-9).

The executive summary reinforces the UAREP selection of and emphasis upon severe health outcomes—morality, low birth weight, prematurity, "obvious congenital malformations", cancer, chronic neurological disease, and spontaneous abortion (p. i-14). The summary also inappropriately applies the criteria of Bradford Hill concerning the acceptability of epidemiological evidence: consistency and strength of association, temporal relationship, specificity, and biological plausibility. These criteria should be applied with critical judgment to well-defined epidemiological investigations, usually when single agents with relatively well-established effects in humans are being studied. In the case of many of the chemicals found in dumpsites, specific effects are not expected to occur (e.g., solvents, irritants, sensitizers). This lack of specificity of expected effects makes it difficult to assume any obvious consistency of findins, particularly in populations which vary by age, sex, race, and other exposures.

It is also dangerous to apply prematurely strict standards of biological plausibility. Until the effects and mechanisms of the toxic agent or mixtures are well understood, it is unscientific to exclude positive findings on the basis of socalled biological plausibility. For example, the CDC study of adverse reproductive outcomes in Vietnam veterans exposed to Agent Orange contained an inappropriate interpretation of the data to explain away the increased incidence of certain malformations in the exposed cohort (Erickson, J. et al. 1984) Vietnam Veterans Risk of Fathering Babies With Birth Defects, J.A.M.A. 252:903). Without knowledge as to the mechanisms of any toxic actions of dioxin on male reproduction, it was asserted that an increase in incidence of one type of structural defect, spina bifida, was not biologically plausible because there was no concomitant increase in incidence of anencephaly.

The summary also provides a misleading interpretation of the state of knowledge from other countries. It is stated that unidentified "spokesmen for responsible governmental agencies generally report that they are not aware of serious health problems related to old disposal sites" (p. i-18) but there is only passing admission that other countries have undertaken little or no examination of the issue. There is no reference to comparable studies, the ongoing health surveillance programs at Seveso, Italy, and at Windscale, England, both of which have reported positive findings.

The main conclusions of the UAREP study are for the most part consistent with, and predictable from, the scope and definition of the study proposal. For that reason, EDF declined to join in the steering committee of this project at its inception. At that time, we expressed our concern to CMA and UAREP that preconceived notions as to the types of health endpoints which would be considered significant, and the relatively short time constraints which were imposed by CMA (more in keeping with legislative than with scientific agendas, it may be feared) would severely limit the ability of the study to contribute meaningfully to our knowledge about the possible health effects of hazardous waste in exposed communities.

EDF's scientific critique of the document relates to two major considerations: the selection of health endpoints for evaluation, both by the studies reviewed by UAREP and by UAREP in its evaluation of significance and severity; and the range of study designs and concomitant issues of statistical power.

A. Health endpoints

The UAREP study, for the most part, counts only clinically defined diseases or causes of death as significant adverse health effects.

This is in marked contrast to the discussion of basic and clinical toxicology which takes appropriate notice of the greater probability that the types of exposures, as well as the mixtures of chemicals, likely to be encountered in environmental exposures around hazardous waste dumpsites, will be associated with health effects which do not fit established clinical diagnoses of major illness (Chapter 4 and 6). The discussion of the need to develop and apply sensitive indicators of early physiological and pathological response is exemplary; however, this discussion is ignored in the insistence upon defining only major health impacts as "adverse" in the rest of the document. Moreover, irreversibility should not be the sole criterion for significance. For reproductive toxins, timing of exposure is critical: terato genesis, for instance, does not require persistence, but only appropriate exposure at critical periods of prenatal development (Mattison, D.R., Nightingale, M., and Silbergeld, E.D. (1984) "Reproductive toxicity of dioxin" in Lawrance, W. (ed) Public Health Risks of the Dioxins, p. 217.) For neurotoxins, transient delays in neural development may have devastating psychological and intellectual effects.

EDF recognizes that our knowledge of the clinical effects of environmental contaminants—that is, the directly measured effects on humans—is limited in two major respects: first, by the difficulty in determining exposure, and second, by the lack of characterization of the health effects of chemical exposures. These limitations present considerable obstacles to developing clinical epidemiological data. Recent advances in biological medicine may reduce some of the problems of evaluating exposure. The area of biochemical epidemiology is rapidly growing (NIEHS, Report of Task Force III, 1984). Epidemiological studies are being directed towards the measurement of biological indicators of dose and early indicators of response, such as DNA adducts as markers of exposure to carcinogens (Perera and Weinstein, 1984). The actual predictive power of these indicators or markers to indicate irreversible effects (or ultimate risk of clinical disease) is as yet unknown, but as indicators of dose, these measures promise powerful new sources of data. Few studies of community medicine have exploited these advances—the sister chromatid exchange study in Love Canal was probably one of the few attempts to do so. These methods need to be applied even in advance of establishing their complete predictive power. The UAREP report conclusions seem to want it both ways: use of sensitive and specific measures of effect, yet only those which can be demonstrated to be related to irreversible, significant tissue damage.

With respect to the problem of identifying effects, given the types of mixtures of chemicals and the doses generally encountered in the environment, it is unlikely that overt clinical disease or distinctive syndromes will often result from such exposures. Exacerbation of preexisting conditions—such as emphysema—or nonspecific deterioration of health and well-being are more likely to occur and have been found by Ozonoff, Harris and Neutra (see Neutra, R. (1983) "Roles for epidemiology: the impact of environmental chemicals" Environ. Health Persp. 48:99). In many cases, detection of these types of effects requires self-reporting by the exposed person; this introduces possibilities of self-selection and bias, which are difficult, but not impossible, to deal with. The problems presented by this situation need not, however, discourage research. As demonstrated by work in Seveso (Columbini, 1981) and Lowell (Ozonoff, op. cit.), these so-called subjective symptoms are likely to be important signs of intoxication. Since neuropsychiatric dysfunction is one of the most societally costly diseases in North America (Landrigan, P.J. (1983) "Toxic exposures and psychiatric disease" Acta Psychiat. Scand. S303:6), these effects are not trivial.

The UAREP study recommends development of indicators for neurotoxicological and immunotoxic response, yet fails to interpret appropriately those few studies where changes in mood and affect, and increases in the rate or severity of infectious disease symptoms were measured. The UAREP study appears to have taken little notice of the advances in occupational epidemiology (Baker, E.L., et al. (1984) "Occupational lead neurotoxicity" Br. J. Ind. Med. 41:352) where these types of sensitive measures have been developed and applied in many well-designed studies around the world, often involving populations exposed to some of the same chemicals found in hazardous waste dumpsites.

There is an inadequate discussion within the text of the range of effects on organ systems which indicate intoxication or toxic damage. The selective definition of health effects excludes a number of potential target systems: pulmonary, dermal, immune, and neurological. To take the example of the reproductive system, emphasis is placed upon toxic effects which severely impact upon fertility or viability of the offspring. Aside from reprinting Bloom's list of reproductive functions—which includes those involved in procreation and those which relate to the health of the adult whether or not procreating (such as age of menopause)—the section in Chapter 4 discusses almost exclusively such effects as genotoxicity, or damage to the genetic material of the germ cells; teratogenic effects; and embryotoxicity; and toxins which decrease fertility or cause abnormal fetal growth. (p. 4-46). The discussion of genotoxicity omits discussion of parental and transplacental exposures associated with childhood cancer (for instance, Peters, J., et al. (1981) "Childhood cancer and parental exposures" *Science* 213:235). There is little discussion of relatively more sensitive measures of reproductive function, such as hormone biochemistry, sexual behavior, secondary sex characteristics, and sexual development. The recommendation for increased surveillance of birth defects acknowledges the inadequacies of CDC's present Birth Defects Monitoring Project for detecting environmental impacts (4-55); in fact, this program is insufficient to detect the possible effects of occupational exposures on reproduction. There is no discussion of the impact of fertility control and changes in social behavior which have so reduced fecundity in this country to the extent that simplistic fertility studies of reproductive rates are almost impossible to use to determine reproductive health; (see NCHS, Health 1980, report on fertility). There is little acknowledgement that effects of toxins on the reproductive system have effects beyond production of healthy children—i.e., neuroendocrine, cardiovascular, and immunological effects.

The UAREP report, particularly in Chapter 4, makes the assumption that because serious, life-threatening diseases such as cancer have not been found in statistically significant numbers, that there is less need for concern, and less need for regulation. However, endpoints such as cancer, birth defects and rare diseases are unlikely to be seen in small studies which, for the most part, tend to be cross-sectional and can only show a "snapshot" disease pattern.

It is unlikely that overt clinical disease will be found in such circumstances, or that they would result over the relatively short term from lower levels of environmental contamination. As seen in the report (Ozonoff, 1984, Harris, 1984, NJ State Department of Health, 1982), exacerbation of pre-existing conditions or general health deterioration and well-being are more likely to occur. Thus, conclusions based solely on mortality or severe disease are misleading. Moreover, broad categories of disease obscure detection of specific effects. For instance, treating "cancer" as a monolithic entity or "birth defects" as a class may obscure changes in prevalence of specific cancers or certain birth defects.

B. Study design

Chapter Five discusses health studies conducted by numerous agencies and organizations. The Environmental Defense Fund also has an ongoing health study project at the present time, which includes a review of such health studies. This part of EDF's critique will refer to both UAREP's and EDF's review. In addition to the studies reviewed by UAREP, EDF has collected 10 additional health studies, prepared by a number of sources. These are listed in Table 1. Some of these studies were conducted by citizens with varying degrees of sophistication and experience in terms of epidemiology, public health, and experimental design.

It is nevertheless useful to consider all these studies, since in many cases they represent alternative approaches to the investigation of health effects in communities living near hazardous waste dumpsites. They differ from the studies reviewed by UAREP in several important respects: types of endpoints examined, questionnaire methodology, implicit or explicit design for cluster detection rather than cohort comparison. Endpoints sampled by these studies generally range beyond clinically defined diseases (or causes of death) and include questions on general health status, including such relatively nonspecific conditions as irritation, nasal-bronchial complaints, rashes, tiredness, and alterations in mood. Most of these studies rely upon interviews using relatively simple questionnaires. Interviewers were seldom blind to the situation; in fact, in many cases interviewers and interviewees were well-acquainted with each other. Few attempts were made to corroborate self-reported symptoms by consultation with physicians or local health care providers. In most cases, there has been little attempt to systematize these studies or to apply any statistical analyses of the results. Nevertheless, they are of considerable scientific interest for the following reasons. First, the information which is gathered in less subject to preconceived limitations on the types of health effects expected to occur; that is, they include a range of open-ended questions concerning health status. Second, these surveys frequently include questions covering both acute and chronic reactions to chemical exposure, and questions dealing with endpoints other than clinically defined diseases. Third, many of these surveys have been able to reach persons who otherwise have declined to participate in government or university-sponsored studies, because of litigation or community polarizations. Fourth, the results of these studies, even if resistant to more rigorous analysis, can be very important in directing further research by groups with access to skills and resources beyond those usually found in community organizations.

An interesting illustration of this last point can be found in the sequence of studies concerning children's health at Love Canal. In 1979, the Environmental Defense Fund, in collaboration with scientists in Buffalo, carried out a research project investigating the growth and maturation of children born and raised in several areas surrounding Love Canal. This study, which utilized a questionnaire design, collected information on birth weights, gestation length, delivery problems, height, weight, and developmental conditions as reported by parents interviewed. The results of this study, as reported by Dr. Beverly Paigen at the Society for Pediatric Research in 1983,

TABLE 1.—HEALTH STUDIES REVIEWED BY EDF IN ADDITION TO AAREP—REVIEWED STUDIES

Study	Type (design)	Major health endpoints	Sample size
Yellow Creek, KY	Health questionnaire (resident survey)	Increased cancer incidence; adverse pregnancy outcomes	901 questionnaires.
Mckin, ME (revised 1984) proposal	Retrospective cohort (2 phase study) and medical record examination.	Occurrence of medically diagnosed health problems; cancer: birth defects.	Not yet available.
St. Regis Paper Co., Minnesota	Health questionnaire (resident survey)	General ill-health	30 people.
Krysowaty Farm, New Jersey	Cross-sectional	General health; medical care-use	32 exposed, 43 control.
S. Glens Falls, NY, "Caputo Dumpsite"	Community health survey	Cancer; birth defects; kidney problems	810 adults.
Starrett City, NY	Household survey	Adverse health effects	193 households.
Brookfield landfill, New York City	Blinded phone health survey questionnaire	Adverse health effects; medical care-use	1,661 exposed, 323 control (555 households).
Old York City landfill, Pennsylvania	Health questionnaire	Basic health effects	30 people.
Love Canal, NY	do	Growth and development of children	239 exposed, 707 controls.
Do	Medical record examination and interviews	Birth weight	174 exposed, 443 controls.

indicate a lowering of birth weights, decreased length of gestation, and increased incidence of childhood problems such as seizures, learning problems, hyperactivity, skin rashes, and eye irritation (see Table 2, figures 1 and 2).

TABLE 2.—HEALTH EFFECTS OBSERVED IN CHILDREN BORN AND RESIDING IN LOVE CANAL [1]

	Percent with illnesses by residence			
	Exposed	Cont.	Adj. odds	Ratio
Seizures	5	2	2.4	1.0–5.8
Learning probs	28	19	1.5	1.0–2.2
Hyperactivity	10	4	3.0	1.3–6.7
Skin rashes	27	18	2.2	1.4–3.5
Eye irritation	13	6	2.0	1.2–3.2
Abdominal pain	12	6	2.1	1.2–3.5

[1] Data from Paigen, et al., 1983.

The findings of this study were not corroborated by consultation of medical records. Although the population of Love Canal was considerably aroused by the issue of hazardous waste dumping at the time of the study, some degree of control was imposed by the stratification of the population into renters and homeowners, and by residence according to the location of swales. In this way, many persons who considered themselves greatly at risk for intoxication were subsequently clustered out of the study according to these additional criteria.

Subsequent to Paigen's research, Vianna and Polan of the New York State Department of Health also evaluated data on birth weights of infants born to parents living in the swale areas of Love Canal (Science 226:1217-1219, 1984). As shown in figure 3 using a more rigid and much less sensitive criterion of clinically defined low birth weight (less than 2500 gm), these investigators found that hospital records demonstrated a large excess of low-birth-weight infants born in the period from 1946 to 1958. They concluded: "our findings suggest that a real excess of low birth weights occurred in the swale area during a time period when there was active dumping in Love Canal at the Love Canal." (p. 1219).

Comparison of these two studies indicates the wisdom of not dismissing categorically all the results of questionnaire studies in a highly reactive community without evaluation of the objective findings. EDF urges similar consideration of the results of other community surveys and questionnaires, without depreciating remarks concerning the source, particularly in terms of developing corroborative followup studies and indicators of health endpoints other than clinical disease. Many of these studies have gathered information which is verifiable by consultation of records; their results also suggest further clinical tests which might provide quantitative information on related parameters (for example, studies on the incidence of infectious disease would suggest tests of immune function; studies on fecundity and fertility would suggest tests of reproductive function).

The UAREP report fails to acknowledge fundamental deficiencies in the design of particular studies reviewed and instead, concentrates only on results that have beeen reported. In the context of such a review, it is also essential to analyze study protocols and methods. Without proper analysis of *all* aspects of the studies, definitive scientific conclusions leading from the results cannot be reached.

Most of the studies reviewed by UAREP and, indeed, most studies in environmental medicine, have followed one of two designs: the cross-sectional or the cohort. This is a limited approach to the study of epidemiological phenomena (see Lilienfeld, op. cit.). In many cases, these designs are poorly suited to the specific conditions being studied. The UAREP review acknowledges these difficulties in a textbook-like summary of epidemiological principles, but then disregards them in examining the specific studies.

Cross sectional studies are essentially snapshots of a population over a limited period of time. Survey of questionnaire-based studies are almost always cross-sectional. Cross-sectional studies may utilize matched cohorts, members of which are investigated for the same endpoints or conditions, or they may survey an entire population, out of which subsets are derived on the basis of the results of the questionnaire or survey. In assessing the validity of cross-sectional studies it is critical to determine how many of the target population participated in the study, and the possibility of systematic differences between participants and nonparticipants. For many of these studies, systematic participation was likely, given litigation, moving away, and other aspects of social response. EDF's contact with citizens around the country indicates that, unfortunately, there has developed a climate of suspicion concerning EPA and CDC such that many potentially affected persons will not participate in government-sponsored health studies.

In the cohort design at least two groups are identified, which (ideally) differ only in terms of exposure to the agent(s) of concern. These groups are then examined to determine health status at the time of study or in some studies, a limited nonconcurrent analysis of major past events in medical history (including mortality) may also be collected.

This design has a number of limitations. First, it requires relatively large numbers for each cohort. Tables 2 and 3 show the requirements for sample size in order to determine statistically significant differences in prevalence or relative risk (Hatch, M., et al. (1981) "Power considerations in studies of reproductive effects of vinyl chloride and some structural analogs" Envir. Health Persp. 41:195). It can be seen that the outcome in question would have to occur at a rate of almost 1:4 in the controls in order to be detected as a doubling in an exposed cohort under 100. Conversely, for equal cohorts of 100, given a prevalence among the unexposed of 15 percent, there would have to be almost a tripling of relative risk for a significant result to be detected at $p<0.05$. On the methodological grounds of statistical power alone, almost all the studies conducted at hazardous waste dumpsites are inadequate upon which to draw any scientific conclusions. It is impossible to overemphasize this point. As stated by Hatch, et al. (op. cit.):

> "The moral of these two tables is that not all studies with negative results are equal. Some negative studies are more equal than others. In order to interpret a negative finding, we need to determine the probability that a particular increase in risk would have been detected, if present."

TABLE 2.—RELATION OF RELATIVE RISK AND STATISTICAL POWER [1]

	Probability of outcome in unexposed group	Relative risk	Statistical power to detect increase in risk
Probability of outcome in unexposed group:			
0.15	0.19	1.3	0.11
0.15	.23	1.5	.29
0.15	.27	1.8	.56
0.15	.32	2.1	.81
0.15	.37	2.5	.95

[1] Illustrated among 100 exposed and 100 unexposed subjects when prevalence among unexposed group is 15%. Power calculated for $\alpha = 0.05$, two-tailed test. [From Hatch, et al, 1981.]

TABLE 3.—RELATION OF PREVALENCE TO SAMPLE SIZE REQUIREMENTS [1]

	Probability of outcome among exposed group	Sample sizes of exposed and unexposed groups [2]
Probability of outcome among unexposed group:		
0.001	0.002	22,403
0.01	0.02	2,243
0.10	0.20	197
0.15	0.30	123
0.25	0.50	65
0.35	0.70	41
0.45	0.90	28

[1] Illustrated by the need to detect a doubling in relative risk with 80 percent statistical power.

[2] Sample sizes were calculated for $\alpha = 0.05$, two-tailed test. [From Hatch, et al, 1981.]

This is not an academic objection. As admitted in the UAREP study, the use of inferential data, such as residence, to determine exposure or lack thereof, is dangerous. The story of Love Canal is illustrative, in that simple stratifications based on proximity to the dumpsite have been modified by the discovery of the swales, or subsurface dishomogeneities likely to allow differential movement of plumes of migrating chemicals.

In cases where classification of exposures is problematic, cluster analytic designs may be more appropriate. Cluster techniques have been used in epidemiology to indicate deviations from normal or random patterns of incidence. They are widely used in cancer studies and underlie the ongoing cancer maps developed by the American Cancer Society and NCI. The New York Times Sunday Magazine (December 2, 1984) has an excellent lay discussion of clusters analysis and its role in environmental epidemiology, using the example of Woburn and its clusters of childhood leukemias and birth defects. The UAREP review rather puzzlingly seems to criticize the Harvard study of Woburn on the grounds that it was a cluster analysis-based case-referent study. That is, UAREP finds it a limitation that the Harvard study "was prompted . . . by the excess itself" (p. 8–78). This is usually how case-control studies are suggested—for instance, the ongoing studies of excess brain tumors in coastal Texas or spina bifida in Wales. Moreover, UAREP criticizes the Harvard study for using a non random group of controls. In case—referent studies, the referents or controls are selected carefully, not randomly (see, for instance, Davis excellent studies of reproductive effects in workers in its 2, 4, 5-T processes (Townshend, J., et al. (1982) "Survey of reproductive events of wives of employees exposed to chlorinated dioxins" Amer. J. Epidemiol. 115:659). There seems to have been some confusion between cohort and case-referent designs.

Another major limitation in design of most of these studies relates to the dimension of time. There are no complete longitudinal studies, that is, studies which encompass the complete medical history of the persons studied. For diseases of long latency, such as cancer, or effects which are manifest with delays, such as early menopause, temporarily incomplete data sets yield inconclusive results. That is, to paraphrase the UAREP executive summary, the duration of exposures may not have been insufficient to cause adverse health effects but rather the duration of followup may have been insufficient for them to be manifested. There are no true prospective studies, that is, forward-looking designs which follow persons from the onset or cessation of exposure onward. The study of the Fairchild spill in San Jose, CA. is a nonconcurrent prospective study in that the timing of exposure is relatively precise, and medical records can be searched for evidence of changes in disease (in this case, birth defects) over time. Little opportunity is recognized in studying before-and-after effects in communities which have been relocated (Times Beach; Love Canal) or whose contamination has been at least partially remediated (Jackson Township; Woburn). Such studies are not sensitive enough to guide remedial efforts, but if vigorous remediation were being undertaken by EPA or Clean Sites (which it is not) this would provide opportunities for prospective studies of certain types of endpoints.

Thus in summary the epidemiological designs of the studies reviewed by UAREP and by EDF are limited in scope and in many cases not appropriate to the size of population available for study.

"Science versus Citizens"

The UAREP report is socially disappointing as a report sponsored by the chemical industry and conducted by the academic community especially because of the adversarial dichotomy it draws between scientists and the general public. The phrase "reactive epidemiology", coined for this report, does much to distort true community situations.

First, to assume that a large, expensive epidemiologic study would be conducted or funded by government without some prodding by an affected community ignores reality. NIOSH conducts occupational health hazard evaluations often based on workers' inquiries. The massive research project on AIDS is fuelled by public pressure. Resources are much too scarce for any government agency to conduct a study purely as an educational exercise.

Secondly, the premise is put forth in this document that citizens who are worried about a toxic dump's effect on their health, somehow "distort" the scientific effectiveness of the study. Such confounders such as subject bias are well-known and can be controlled for in a well-designed and well-executed study. Workers who participate in occupational health studies are probably more aware of their potential chemical exposures as are residents in dumpsite communities, and continue to be selected as good study subjects for epidemiology.

It is important, as awareness of toxic chemicals continues to grow, that scientists and citizens work hand in hand on understanding chemical exposure problems. Although levels of scientific or statisical sophistication may differ, the general public is our client and our subject matter as scientists. It is therefore, extremely valuable. In many cases, a local community may know a great deal about their local site or contamination source. They have often pointed to apparent clusters of disease which need scientific investigation. Their information can aid us all in a variety of situations and we must develop ways to make such information useful for our scientific needs, not to deprecate it or to wish that our subjects were as docile and unmindful as laboratory mice.

5. EDF RECOMMENDATIONS

EDF has several recommendations, to UAREP for the revision of this draft report, and to the community of interested scientists, legislators, policymakers, and concerned citizens.

A. Recommendations to UAREP

In the context of this critique, EDR recommends revision of this document to include an extensive discussion of the limits of epidemiological designs, and the requirements of statistical power in evaluating results, positive and negative. EDF recommends a consistent approach towards the definition of adverse health effects, and one which transcends the current restriction to clinical disease and death. EDF recommends a more thoughtful reconsideration of the characterization of community concerns as merely interference in the work of scientists. EDF recommends evaluation of the recent literature in occupational medicine and epidemiology for information on the application of questionnaire methods, the control of subject bias, and the development of measurements in neurotoxicity and other organ system toxicities. EDF urges UAREP to consider citizen-conducted studies and other sources of information on health effects, other than government-sponsored or university-conducted research.

B. General recommendations

EDF is most concerned about the limitations of present studies, including those reviewed by UAREP and EDF. These studies have mostly applied the simplest of epidemiological designs, cross-sectional or cohort, with inadequate understanding of the appropriateness of the conditions to these designs. In particular, EDF recommends use of prospective designs wherever possible, and the collection of complete longitudinal histories. This approach will be facilitated by the establishment of registries at hazardous waste dumpsites, as we have recommended in testimony before the Senate Committee on Environment and Public Works last Spring (attached). Despite our successful litigation against the Department of Health and Human Services over a year ago, CDC has yet to establish a single registry of persons exposed to hazardous waste. Registries represent a unique opportunity to "capture" the exposed population before it disperses and disappears. Registries are invaluable for collecting prospective, longitudinal data, and for recalling exposed populations to collect data at the cutting edge of toxicology—that is, as information on the likely effects of toxic chemicals is developed, new clinical tests can be applied to the exposed cohort.

For all these reasons, EDF cannot support the simplistic recommendation in the UAREP report that standardized protocols be used in future epidemiological studies. This is advanced despite the fact that throughout the report, it is acknowledged that each site may be a unique combination of both chemicals and geology. Variations in geographical considerations and population characteristics may be significant factors in assessing health risks at a site. Thus, it is inappropriate to recommend standardization of data collection and analysis for all site. As a consequence of such a system, valuable information will be missed. It is not the questionnaires that need to be made uniform, but rather the framework and methodology for proper study design that needs reform. Those of us in the scientific, political and legal communities must be careful not to try and shape real situations for scientific convenience. Our knowledge of hazardous waste health effects may be limited but we can be sure that community exposure will remain a complex issue. We must not be swayed by the temptation to make our studies easier to do, rather than determining an easier way to make them more valuable. To quote Selikoff: "Either we are going to have to change the toxic chemical waste dump sites or we are going to have to change epidemiology." (Selikoff, I (1983) "Clinical and epidemiological evaluation of health effects in potentially affected populations." Envir. Health Persp. 48:105).

Standardization would have a chilling effect on scientific advances in the field and is premised on the erroneous assumption that we know how to design the optimal study, or that there is a single study design suited for all situations requiring study. As noted, EDF's assessment is that the field of environmental epidemiology has been hindered by too little innovation in study design; imposition of standard approaches would be likely to doom us to generating more and more inconclusive, statistically inadequate results.

EDF strongly supports efforts at improving baseline data on human health in the US, through such instruments as the National Health and Nutrition Examination Survey, which we have recommended be applied to studying health effects of hazardous waste. EDF also recommends improvements in data linkage, between such data sources as the National Death Registry, various state cancer registries and birth defects surveillance programs, and registries of residents at hazardous waste dumpsites (see also Landrigan, P.J. (1983) "Epidemiologic approaches to persons with exposures to waste chemicals" Environ. Health Persp. 48: 93).

EDF welcomes the involvement of national professional and health voluntary organizations, such as the American Academy of Pediatrics and the American Council for Learning Disabilities, both of which have sponsored symposia and research on environmental factors in children's diseases and developmental disabilities (for example, Ross Conference on Pediatric Research, "Chemical and radiation hazards to children", 1982).

EDF recommends increased attention to improving exposure assessment, specifically for the purposes of clarifying epidemiological investigations. Researchers may be unaware of the willingness of concerned citizens to participate in exposure analyses, even those which require invasive surgical procedures such as fat biopsy. Use of existing tissue and sample collections may improve exposure assessment. Particularly in case-referent studies. For example, blood samples collected from newborns for phenylketonuria testing can be used to measure heavy metal exposure in utero.

Finally, EDF recommends adequate and stable longterm funding of research in the area of environmental epidemiology, in the context of Superfund reauthorization, appropriations to CDC, NIH, and EPA, and efforts by the private sector. EDF has presented in Congressional testimony (attached) recommendations as to what constitutes adequate funding for such research, to provide for site-specific health studies ($22.5 million per year), longterm exposure registries ($4 million per year), and studies of the association between chemical exposure and human health effects, as well as sentinel disease registries for data linkage ($30 million). These are modest recommendations, in terms of the work to be done at the thousands of unremediated sites around the country. We regret that CMA has not joined us in supporting these recommendations for adequate health research funding under Superfund. We hope that from our dialogue on this report by UAREP, we may continue to find a common interest in increasing our knowledge of the health effects of hazardous waste and invigorating our efforts to prevent their occurrence.

ENVIRONMENTAL DEFENSE FUND,
October 27, 1983.

BRUCE KARRAH, M.D.,
Chief Medical Officer, Employee Relations Department, N-11400, E.I. du Pont de Nemours & Co., Wilmington, DE.

ROBERT ROLAND,
President, Chemical Manufacturers Association, Washington, DC.

KENNETH D. FISHER, Ph.D.,
Life Sciences Research Office, Federation of American Society for Experimental Biology, Bethesda, MD.

DEAR SIRS: We would like to respond formally to requests from CMA and UAREP to participate in the planned UAREP research project on evaluating health effects associated with environmental exposure to hazardous waste from dumpsites. We have stated to you by telephone and in meetings that we do not wish to participate in this study; this letter is to amplify our reasons for such a decision. We wish to emphasize our agreement that this topic is important and deserves the attention of the biomedical community.

Our concerns relate to the proposed operation of the study and the scope proposed. Our comments are based upon scientific judgment and upon our extensive involvement with citizens and health scientists directly involved in the investigation of associations between chemicals from hazardous waste dumpsites and adverse health effects.

The methods by which UAREP has become the "sole source" contractor for this project are not conformity with the usual practice of funding biomedical research. That is, after development of a feasibility design and proposed project (by UAREP), there was no effort by the sole sponsor (CMA) to invite open competition from the scientific community. We would have recommended that the NIH RFP model be used for this purpose, to avoid the appearance of a closed circuit between sponsor and contractor. Moreover, there was little opportunity for comment and revision of the original proposal, and no notice of such important parameters as the time allocated for completion (see below).

Invitations to co-sponsor this research project were tendered by CMA after finalization of the proposal and selection of the contractor. Thus, issues related to the nature of the proposal and the reputation of the contractor were moot.

As we discussed with you earlier, we do not consider the proposed scope of the project appropriate to the fundamental issue being considered: the detection and evaluation of adverse health effects associated with exposure to hazardous waste in dumpsite communities. It has been our position, stated in many meetings and hearings, that this issue is scientifically complex and challenging. The time allocated under the contract (8-10 months) is unduly short (for reasons which seem dictated more by external political pressures rather than good science), and we seriously doubt that anything will result beyond the repetition of such general comments as those made in recent symposia held by the National Academy of Sciences and Rockefeller University.

The two major scientific issues relevant to this project, and on which research expertise is greatly needed, are determination of exposure and the appropriate assessment of effects. The proposed study offers little in advancing our methods for predicting or monitoring exposure on either a qualitative or quantitative basis.

There is no consideration given to innovative or state-of-the-art approaches to exposure assessment—such as measurement of DNA adducts or mutagens in urine, cytogenetic analyses of lymphocytes, sperm morphology, or immune system biochemistry. A major problem in epidemiology is the incorrect or imprecise assignment of subjects by exposure categories. In occupational health studies, surrogates for exposure assessment (such as occupational history) have been used to group and analyze data; we need similar methodological experiments in environmental health studies.

The proposal focuses upon acute toxic effects "likely to result from human exposures to [such] chemicals." This focus is in strange contrast to the conclusions of many experts, that the types of exposures, as well as the levels of chemicals entering the human environment from dumpsites, are likely to be associated almost exclusively with chronic effects. Your insistence upon acute toxicity to provide a set of endpoints seems to bias the project towards negative results, since it is unlikely that there will be many instances where exposures are such to cause acute toxicity.

The proposal assumes a limited definition of expected health effects. These reflect a bias towards pathology and explicit cellular lesion, not surprising given the collective expertise and experience of UAREP. However, it is much more likely that in persons exposed chronically to low levels of toxic chemicals, sensitive biochemical indicators of health effects will precede pathological damage. Answers from such disciplines as immunotoxicology, neurotoxicology, and reproductive toxicology must be sought. It is not stated that experts from these disciplines ewill be involved in this proposal.

Finally, it is our opinion that these important issues are better addressed by the general scientific community with opportunity for input from the affected communities and from those who have already worked in this area. Moreover, we suggest that the proper forum for such discussions is through the newly formed Agency for Toxic Substances and Disease Registry within the Centers for Disease Control. We find this attempt to build a "consensus" around the narrow objectives of one party with highly visible interests in the matter to be unfortunate and unproductive of good science.

Yours sincerely,

Ellen K. Silbergeld, PhD, Chief Toxics Scientist, Toxic Chemicals Program; A. Karim Ahmed, PhD, Senior Scientist, Natural Resources Defense Council; Khristine L. Hall, Attorney, Toxic Chemicals Programs; and Jane Bloom, Attorney, Natural Resources Defense Council.

Mr. SIMPSON. Mr. President, that is evidence of my respect for the Senator from Maine. He is a spirited debater and does it magnificently, and we have those same types of discussions in the Environment and Public Works Committee and we do, I think, as the chairman would say, somehow get the issue aired.

The Senator from Vermont is an able lawyer, and he is sitting before me. I leave him out of that designation of those of us who have been trial lawyers who speak on this issue. He is certainly a man who has left me with more Vermont lawyer stories than I can ever use, but I have used a great many of them, I can tell you that, and maybe that is what will happen here.

The Senator addressed me about the Vermont lawyer in a small town who moved away and took all of his witnesses with him when he left. Maybe that is what is the fate of all of us if we stay in the law business long enough.

Let me just share a couple of things in response. I think they need to be in the Record. One is the subject, at least as I understand it, of the report that we speak of here. I and this report recall, please, was the result of 13 medical doctors or Ph.D.'s in 13 of our finest universities in the United States.

Mr. President, I ask unanimous consent to enter into the Record the one page that discloses the persons who rendered the report, fine, remarkable, professional people with medical backgrounds. I think Senators will want to hear that carefully because that is a very key issue as we discuss this.

There being no objection, the material was ordered to be printed in the Record, as follows:

EXECUTIVE SCIENTIFIC PANEL

Chairman: Joe W. Grisham, M.D., University of North Carolina, School of Medicine, Chapel Hill, NC 27514.

Martin Alexander, Ph.D., Cornell University, Ithaca, NY 14853.

Robert E. Anderson, M.D., University of New Mexico, School of Medicine, Albuquerque, NM 87131.

Arthur D. Bloom, M.D., Columbia University, College of Physicians and Surgeons, New York, NY 10032.

Morton Corn, Ph.D., The Johns Hopkins University, School of Hygiene and Public Health, Baltimore, MD 21205.

John E. Davies, M.D., M.P.H., University of Miami, School of Medicine, Miami, FL 33101.

John Doull, M.D., Ph.D., University of Kansas, Medical Center, Kansas City, KS 66103.

Virgil H. Freed, Ph.D., Oregon State University, Corvallis, OR 97331.

Eugene V. Perrin, M.D., Children's Hospital of Michigan, Wayne State University, Detroit, MI 48201.

Henry C. Pitot, M.D., Ph.D., University of Wisconsin, School of Medicine, Madison, WI 53706.

Gabriel L. Plaa, Ph.D., University of Montreal, Faculty of Medicine, Montreal, PQ H3C 3T7, Canada.

Paul V. Roberts, Ph.D., Stanford University, Stanford, CA 94305.

Reuel A. Stallones, M.D., M.P.H., University of Texas, School of Public Health, Houston, TX 77225.

Mr. SIMPSON. Mr. President, I think there was a rather sinister reference perhaps as to who paid for this. If we brought that up every time we dealt with reports in this city, it would leave us all in tatters, because the business that lives around us live off of people who go up to people and say, "Here's what I'm looking for and here's what I hope you'll dig up."

So whether it is the Environmental Defense Fund and their balanced position, if it is—and I really do not believe it might be in this instance—or this group which I think is a little more balanced from looking at the fact they are talking about medical doctors and

Ph.D.'s—and I am sure the chemical industry would have one that might not be balanced, so I think that is a reality we all address when we deal with reports in this place, but I want to share with you just one thing that I think deserves to be said because the Senator from Maine talked about a report, the 301(e) report, and that was put together by lawyers. It was put together for the Congress after the passage of Superfund and recommended a pilot program of assistance.

Two important points. It recommended State programs, and I would be very pleased to participate in the process if the States tried innovative approaches that might provide us with the kind of information base that we are looking for.

When the Senator speaks of the opposite conclusion in the university study, there is still one unmistakable point--please do not miss that—and the unmistakable point is that there is not yet enough information, period. That is part of the opposition with regard to that report.

However, back to the 301(e) report which recommended study programs. That report was put together by a group of lawyers. It was not put together by doctors, medical persons, or scientists. I think that is a very important distinction. These were lawyers who were trying to provide mechanisms, if there was a problem. They did not try to show what that problem was medically. They were saying, as lawyers, "Here are mechanisms," but they were not involved in what we were talking about here, about what is the problem.

If I leave nothing else with you from the debate, I hope that you might be aware of a most significant fact in connection with what we are doing here with regard to this issue. We speak about some of the things I have discussed, about agent orange, and we come back to the exposure issue. The proposal of the Senator from Maine does not solve this problem. We are dealing, as I understand it, with the actual language of the Mitchell proposal, limiting benefits to "persons who have been exposed to a release of the relevant hazardous substance." That is the new amendment language. Am I not correct? I believe that is the new amendment language.

The problem is this—I wish it were not, but it is: Waste sites, to the extent they present a problem, do so because of any number of chemical substances which may be acting together. This was the valley of the drums theory. This is the cesspool theory. Those were the things we were after when we were trying to correct Superfund. This meant there may be a synergistic effect of several chemicals working together that we cannot even identify. That is one of the real problems of Superfund.

They say, "What did you make?"

"You spewed out this substance."

They say, "We found a trace element in that dump, and we want you to pay for all of it."

They say, "That can happen when two elements come together."

That is why we spent so much money on attorneys' fees and scientists and did not get the job done and we get back to this. They are substances which, if they did cause a problem, could lead to some other difficulty, could lead to diseases absolutely unrelated to a single exposure, to a single chemical.

If you think I am leaving you somewhere, you have a situation opening here which is much more complex than agent orange. At least with agent orange we were dealing with dioxin. There are few health effects studies on these various substances, some 250; and if we get into that with gusto, some say there are 400 substances we should deal with as to toxic substances. Some are easily recognized as hazardous to humans and some are not, but some are in combination with others. The duration of the exposure, whether it was extensive or limited, will be hard to demonstrate.

You are headed into 250 chemicals, or 400. In agent orange alone, I submit, there have been 67 studies which have cost this Government $150 million on one hazardous substance, which has been identified so clearly that we even have identified people who actually were in it, had it cover their bodies. The way they sprayed it was to have it cover the interior of the aircraft, to have the vacuum spray it.

We again come up with the gut-hard issues even in court. In fact, the chemical companies put up a trust fund and said, "Here's $180 million. We're tired of contesting it, even though the court never proved cause and effect." This is agent orange. That is one substance.

We are talking here about 250-plus substances, some of them operating singly, to be deleterious to human health, and some act in combination. There is no way that we are ever going to find what we are looking for, without an extraordinary situation which is beyond belief. If you have 67 studies on a thing like agent orange, imagine what you are headed for with some of the other material. That includes one where they actually had it on their bodies, and that is Operation Ranch Hand. I commend any of you to that if you wish. It is a serious approach to what has happened.

I understand the feeling of the Senator as he speaks about an entitlement program and how it comes up. It may not be a legally recognized entitlement program, but politically it will win all the award for being an entitlement program. Politically, it will have the same effort. You will not be able to take that away.

The Senator and I sat and listened, and I appreciate his counsel that we cannot do this on anecdotal testimony. But if you went to the hearings, you will want to do something on anecdotal testimony; because here is a mother and here is a deformed child. They say, "This was caused because we live near a dump, a mile from our home, and you will recompense us."

It is not easy to walk into one of those or walk out and say, "Well, we have to be a little more cautions. We have to prove up." Who likes to be in that position? I do not. I am a rather compassionate fellow.

When you find the same disease in that child as the same percentage of children in that age who were not exposed to that thing, I am not going to be the wretched one who goes in to fight off those anecdotal stories. They are real; they are human beings; they are crying; they are torn up; they are wrenched. But that does not fit any of the compensation schemes we have ever had in the history of compensation, in the tort system or any other system.

I join the Senator from Maine when he says that those of us who are opposed to doing something want to do nothing. That "ain't" me. I am opposed to this, and I want to do something, but I'm not going to do something which is absurd and which does not meet every test of the legal systems of the United States and everything we know about cause, effect, and compensation.

If you are going to do these things, do them on the basis of sound medical and scientific evidence, and it is not there. It is not even there in agent orange, on which we have spent $150 million in 67 studies.

I cannot even pronounce half the things we list. Scientists say: "We don't have any idea what that does. We haven't even put it into a rat yet." That is the kind of stuff with which we are dealing.

If there is a genuine need for a pilot compensation program at this point, with what we know in America, I want to be a cosponsor of that. But right now it is not there. We should wait to see the results of the comprehensive medical testing and studies which are required by the Committee on Environment and Public Works in section 104 of Superfund. It is in there. I am ready to wait and see what those reports say. It was adopted because we saw a need for studies before we determine what to do in this area. I think that is exactly where we should go.

If we are going to be reasonable and responsible, then let us proceed on a thoughtful basis, and that I will join with and work for in every way.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Administrator of the U.S. Environmental Protection Agency, dated May 2, 1985, to Senator STAFFORD, the chairman of our committee, with regard to some comments on the legislation especially in this area.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. ENVIRONMENTAL
PROTECTION AGENCY,
Washington, DC, May 2, 1985.

Senator ROBERT STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On March 7, 1985, following two days of markup, the Senate Committee on Environment and Public Works reported S. 51, "The Superfund Improvement Act of 1985." I enjoyed working with you during the Committee action. Although the Committee adopted several components of the Administration's bill prior to final vote, several provisions that we consider essential to our support of this legislation were not adopted, and several provisions which we cannot support were adopted. I would like to take this opportunity to inform you of these provisions, and why we believe that it is most important that the Administration's position be incorporated into S. 51 prior to final passage by the Senate.

No general revenues—In light of the current deficit and the efforts of the Administration to restrain additional burdens on the budget, we strongly believe that general revenues should not be used to supplement the Superfund. Rather, the Administration believes that the legislation reauthorizing Superfund should provide adequate revenue from taxes on those industries generally associated with the type of hazardous waste problems Superfund is used to clean up. The Administration bill maintains the feedstock tax found in current law and proposes a waste end tax that will generate approximately $600 million a year. Additionally, this tax will provide an incentive to waste industries to minimize waste generation and undertake better waste management activities.

Victims assistance demonstration program—This provision was added in the Senate Committee during mark-up and is strongly opposed by the Administration. While initially establishing a demonstration program, the provision, if enacted, could lead to a far more expansive victim's compensation program. The creation of a broader victim's compensation program would significantly impact our legal system as well as many existing government health and income maintenance programs. The Administration is also very concerned that the eligibility criteria of the demonstration program may mislead many persons into believing that causation has been determined between a given exposure and a particular disease when, in fact, no true causal link has been established. In addition, there are numerous significant ambiguities in the provision that would make the demonstration program extremely difficult to administer, and almost guarantee that the program would be mired in a morass of litigation. For these and other reasons the Administration believes that the issues presented by the program have policy and budgetary ramifications far beyond the scope of Superfund, and therefore should not be considered in the context of Superfund reauthorization.

Scope—Under current law, the response authorities of Superfund are extremely broad. The Administration bill focuses the Superfund program on uncontrolled hazardous substance sites through narrowly crafted exclusions. The Environment and Public Works Committee adopted some of these exclusions. We strongly urge your support for those that were not adopted in order to focus the program on those releases which present the greatest threat to public health and the environment and to enhance EPA's ability to effectively manage the program.

Citizen's suits—The Committee adopted a provision that would allow citizens to sue for failure to perform nondiscretionary duties under this Act, or for violations of any regulation of CERCLA. We find this amendment to be of great concern because of the number of mandatory duties and stringent timeframes incorporated in other provisions of S. 51. The combined actions of deadlines and citizen's suits could lead to a large number of lawsuits against several Federal agencies, including EPA. Furthermore, to the extent that the pace of Federal facility cleanup is determined by available resources, management constraints and a long lead time needed to develop projects, citizen suits to enforce stringent mandatory deadlines would do little more than generate litigation costs for all parties.

Fund size—The Administration bill provides for a $5.3 billion fund over the five year life of the reauthorization. We believe that through a strong enforcement program, we will realize an additional two billion dollars in private party cleanup. At this level of funding, we can operate an efficient, well-managed program that protects human health through an aggressive emergency cleanup program and makes significant progress toward addressing the long-term hazardous waste cleanup problem. If the program is accelerated beyond this pace, the Agency will experience problems in assuring proper oversight of contractor support, in hiring qualified technical personnel, and effectively managing the simultaneous cleanup of over 800 complex clean up projects annually. The House Appropriations Committee, citing many of these same problems, released a study on Superfund recommending a program of approximately one billion dollars a year. Additionally, the Office of Technology Assessment stated in its report on Superfund that the Agency should conduct an aggressive emergency response program but move more cautiously on long-term remedial cleanups.

Federal facilities—During the Committee's consideration, an amendment was adopted that established a mandatory cleanup schedule for sites on Federal facilities. The schedules in this amendment are unreasonable and could lead to a considerable number of citizen's suits against Federal agencies that fail to perform within the timeframes. This amendment, together with another provision of S. 51, provides for EPA oversight and concurrence on cleanup actions undertaken by other Federal agencies. This is unnecessary, as EPA currently is involved with other Federal agencies as they undertake their cleanup programs. For example, EPA currently operates under a Memorandum of Understanding with the Department of Defense concerning cleanup of sites on their installations. The FY 86 budget request included over $300 million for the DOD hazardous substance cleanup program. The Administration opposes the Federal facility amendments as unworkable and unnecessary.

State cost shares—The Administration bill includes amendments that strengthen the role of the States in the Superfund program. Specifically, these amendments will expand State authority by promoting multi-site cooperative agreements and allowing State enforcement costs to be eligible for Superfund money. The amendments maintain current Administration policy to fund 100% of the costs of the emergency removal actions, site investigations, engineering studies and design, but increase the State cost share requirement for site construction to 20 percent. In order to assist a State's ability to raise revenues for its own State Superfund, the amendments eliminate the preemption language from current law.

Additionally, the Administration bill requires States to site new facilities or to enter into regional compacts for waste management. This provision would require States, within two years of enactment of the bill, to assure the availability of sufficient RCRA disposal or treatment capacity to handle all the hazardous waste expected to be generated within that State for specified period of time (e.g., 20 years).

Natural resource damage claims—The Administration bill provides that no natural resource damage claims could be paid by the Fund. The amendment would allow Fund money to be used for assessment and cleanup of natural resource damages as a part of a remedial or removal action. Additionally, responsible parties could still be held liable for damages to natural resources. Currently, over $2.7 billion in claims are pending against the Fund. The Committee adopted an amendment that would not allow Fund money to be used to pay natural resource damages in any year that all funds are needed for cleanup of sites posing a threat to human health. Although this may prevent Fund money from being used to pay natural resource damage claims for the next several years, this approach would allow the claims to back up. The Administration urges adoption of its language barring the use of Fund money to pay natural resource damages claims at any time.

The Administration strongly believes that the above discussed amendments to S. 51 are essential to permit us to move ahead in a responsible manner to clean up our nation's uncontrolled waste sites.

I look forward to your continued assistance in urging Senate adoption of these most important Administration amendments.

Sincerely,

LEE M. THOMAS.

Mr. ROTH. Mr. President, at this stage I merely want to reiterate some of the points raised by my distinguished colleague, the Senator from Wyoming. But in starting out let me point out once again that one of my concerns is that section 129 does divert both resources and attention away from what I consider Superfund's primary goal of cleaning up waste sites. The best thing we can do for the health of the American people is to attact that problem vigorously and expeditiously.

The problem with trying to introduce a new health program at this stage is twofold.

One is that we do not have the money necessary for any new ambitious undertaking, but even more important, we lack the necessary scientific underpinning for any such program.

I do not have to tell the distinguished Senator who is presiding at this moment the serious financial problems this Government faces, and yet we have here a proposal that I think in many ways demonstrates what has happened in the past where well-meaning Senators introduced a bill or a program to take care of a problem that they anticipated would not cost much, but before many years have passed these programs have become multibillion-dollar programs. It seems to me that is the significance of the black lung, kidney dialysis, and many of the other programs. They started our small, but they ended up large.

But I think particularly serious is the lack of scientific information to undertake the kind of program proposed by the distinguished Senator from Maine.

I am not going to reiterate what has already been said by the distinguished Senator from Wyoming as to the review that was conducted by an executive scientific panel of 13 academic scientists, assisted by numerous scientific consultants and by staff members of Universities Associated for Research and Education in Pathology and the Life Sciences Research Office of the American Society for Experimental Biology. This study was attacked by the question as to who financed it.

Just let me point out that the section 301(e) study group that was referred to by the Senator from Maine was composed of the American Law Institute, the American Bar Association, the American Trial Lawyers Association, and the National Association of Attorneys General. I think it can be fairly said that they were neither scientists nor were they necessarily uninterested in their recommendations.

Certainly no group would have more to profit from litigation in this area than this group of study group members. I am not saying that that was their intent or purpose. It seems to me that it is foolish to attack either study on the basis of who made it.

But the one thing I think needs to be emphasized about the scientific study is that it says very clearly that based upon a comprehensive search of available data the ESP has found few published scientific reports of health effects clearly attributable to chemicals from disposals sites. Only one report, one report offered convincing evidence that serious health effects had resulted from exposure to chemicals originating from a land-based disposal site, hardly the kind of scientific background and data with which one wants to embark on a new health program.

In that same paragraph it goes on to say, and we cannot read, of course, the whole report, but it says:

> However, the results can be interpreted to indicate that no risk exists but, rather, that no health effects clearly attributable to the sites have been detected to date by the study methods employed.

None of us are saying this is the final word on the scientific data or information. What we are saying is that the information is too limited, and the scientific facts do not warrant the kind of legislation being proposed by the Senator from Maine.

He goes on to argue, of course, that this is only a demonstration program. Anyone who has been here very long knows full well that once this kind of program becomes instigated, there is no stopping it. It is next to impossible to close Pandora's box, and that is the lesson of black lung and others.

I point out that this demonstration program will be very, very difficult to keep from expanding. There is something I think like 850 sites that conceivably might be covered, and let me tell you if they select a site in your State and those within that site who have been exposed and show symptoms get medical coverage, it is going to be politically impossible not to expand this program to cover other sites within that State. And the same thing will be true across the country.

The Senator from Delaware would find it very difficult to resist the demand for coverage in his State if a nearby site in Pennsylvania or New Jersey were covered. So the politics of it is that while the demonstration program might start small, it is only a matter of time until there will be national coverage.

But the other point I think should be made is that in many ways this is legally introducing a whole new concept, where coverage will be based upon exposure and symptoms; no causal relationship has to be shown.

As a matter of fact, I would say to be candid that the language in this demonstration program is so novel and in many ways imprecise that if anybody is going to benefit from it it is the lawyers. I can well see much litigation springing from this proposal if it should become law.

So I think it is a fair statement, Mr. President, to say that if we take this first step now it is only a matter of time until it is going to be expanded to cover other sites, and I cannot agree with the distinguished Senator from Maine that the coverage of health will not be costly. I would just like to point out that our health programs now currently cost something like $107 billion a year and that is not including, mental distress or some of the other things you have in civil suits. This is for actual medical care paid for by the Federal Government.

I know the Finance Committee has struggled with how to finance these growing programs. I am not saying that there is no problem, that there is not any need. But based upon the fact that we have inadequate scientific information to embark on a whole new program with a whole new legal concept, I urge that we look at the present programs and the present tort law and see if this need cannot be satisfied in that fashion.

I congratulate the Senator from Maine for his concern. I think we all are deeply worried about the number of sites in this country that remain unclean and in an unhealthy condition. But the best way to attack that problem is to move ahead with cleaning up these waste sites and in the meantime continue to determine what the needs are under current tort and other medical programs.

I yield back the floor.

Mr. MITCHELL. Mr. President, I will try to respond briefly to some of the comments made by my colleagues from Wyoming and Delaware and will not attempt to repeat the arguments made in detail during my earlier statement.

First, I would like to say that, of course, it is an old tradition in American politics to identify an unpopular group and then to associate that group with the cause which one opposes. And if anyone needed any evidence of the apparent unpopularity of lawyers in America, one needed only to sit here for the last few minutes and listen to two lawyers describe, in the most perjorative terms, reports, because they were prepared by lawyers, that in and of itself apparently casts the report in doubt as opposed to a report prepared by doctors.

With respect to the question of who paid for the study, I said before and I say now, it is a relevant fact for those determining the issue to be aware of who paid for the study. It does not invalidate the results of the study, but the fact is throughout our daily lives, in common exchange with others, we give weight, great or little, we attach credence, more or less, to a position based upon who takes the position. Included in that is knowledge of who financed the study. And, therefore, I think that Senators ought to at least know that the study to which my colleagues have repeatedly referred was paid for by the organization which opposed this legislation.

Senators who read the study may be persuaded that it is valid, that its conclusions are persuasive, but they ought to at least know who paid for it.

Second, the study done by the lawyers, the 301(e) study, the Senator from Delaware suggested, although he was careful to say it was probably not their intent, that they had a great interest in the outcome, because, naturally, everybody knows that lawyers want to spur on litigation. But if the Senator had read the study, he would have known that they reached a conclusion that is diametrically opposite to that interest, because the major conclusion of the study was that there should be an administrative compensation program set up to take this out of the tort system in the courts. The study itself concluded:

> Its major purpose would include the provision of limited compensation to meet the economic and medical needs of persons injured in a manner which is more prompt and less costly than tort litigation.

That is why we set up administrative compensation mechanisms to take them out of tort litigation. And that is what this group of lawyers recommended.

So if we are going to look at what people's interests are, we ought to at least give them credit for making a recommendation which is contrary to their presumed interests, even assuming the fairness of the characterization that their presumed interest is somehow to encourage litigation that they ultimately will benefit from. There is no doubt there are some who would do that, but I suggest that not every lawyer does and certainly not the attorneys general and other groups who participated in this.

As far as the suggestion and conclusion of the Senator from Delaware that we look at the tort problem, I say to him again that is what we did. That is what this study is. That is what section 301(e) of the Superfund mandated. This is a 359-page report, the result of many, many months of careful study of the tort system. And the conclusion was that it poses substantial obstacles and, therefore, they recommended a national administrative compensation scheme, which I emphasize is not included in my provision in this bill which is a much smaller or narrowly drawn provision.

Another argument is made that you cannot do something for some and not for all. First, I note that supreme irony of those who opposed doing anything for anybody, citing as something wrong with it that it only does something for some. Were we to respond to that criticism, we would, of course, establish a National Compensation Program, but I know the Senators are very much opposed to that and certainly would not support it. But that is because that this must be seen not as an effort to provide a specific form of compensation only to a limited number of people, but, rather, as an effort to determine what the scope of the problem is, the intensity of the problem, and whether or not there is some mechanism that can be developed to deal with it.

It is, in every respect, a demonstration program, a trial effort, a searching for a solution to a problem that, in my judgment, does not affect, relatively speaking, enormous numbers of Americans because, of course, the overwhelming majority of Americans do not live near or closeby hazardous waste sites and have not been exposed to hazardous releases. But for those who are so affected, it is an enormous, overpowering tragedy.

With respect to the comment by the Senator from Wyoming regarding the number of substances involved, I repeat what I said earlier, that under a separate provision of this bill the administrator is required to perform a health assessment for each release, threatened release, or facility on the national priority list. And that includes a description of the contaminants that are involved. The judgment as to which substance or substances are relevant to consideration of this demonstration is to be made by the Administrator, in any event, under a completely separate provision of this bill.

I do not believe—and if I am incorrect I would ask the Senator to correct me—that the Senator was opposed to this part of the bill, the provision calling for a national health assessment; nor do I believe that the Senator from Delaware has expressed any opposition to that part of the bill.

So all the demonstration program contemplates is taking the information contained in the study that must be conducted under independent provisions of the bill, seeing whether the results of that study contained information which would justify this limited step, establishing very tightly drawn and narrow criteria for inclusion of a very small number of sites within this program to be selected subject to the President's discretion, and then providing that assistance in the form of medical examination, and, for a very narrow class of persons, compensation for out-of-pocket medical expenses.

This has nothing to do with lawyers and lawsuits. It is a complete red herring to suggest that this is somehow going to be a lawyer's bonanza, and attempting to link to the high transaction costs that have occurred in lawsuits under the existing Superfund is a complete misapplication of the facts.

In the first place, how many people are going to hire a lawyer and sue to recover the costs of a medical examination if that is all that is available to those persons who have been exposed but have not demonstrated present symptoms of the relevant disease or injury? And with respect to those who have demonstrated such, reimbursement is limited to actual out-of-pocket medical expenses that have been paid to deal with it or those expenses to be incurred in the future.

So I say to the Members of the Senate that while it is apparently popular to engage in lawyer bashing, such statements bear no relevance to the provision that we are now considering.

I conclude by stating at the risk of repeating once too often that this is a limited demonstration program, limited in time to the 5 years authorized in the bill, limited in amount to a maximum of $150 million over 5 years—not 1 penny more can be spent—and limited in scope to between 5 and 10 areas selected by the President after a health assessment study has been conducted as required under another provision of the bill, and the results of that study established three things: that there is a disease or injury for which the population of the geographic area, defined by the administrator under the study as already required by law, is at significantly increased risk; second, that disease or injury has been demonstrated using sound scientific and medical criteria by peer review studies to be associated with exposure to that substance; and, third, that there are people in that area that have in fact been exposed to the substance. Then and only then is an area eligible for nomination, and then and only then is any individual even eligible for the very limited benefits under this bill.

It is, I say to my colleagues, a limited good-faith effort to try to get the information that we need to see if we can deal with this problem. As I said earlier, if we had done this in all the other areas cited by my colleagues, if we had a demonstration program in the other areas, perhaps the criticism they now level at those programs may not be applicable. But the one thing that all of those other programs have in common is that there was no demonstration program, and there was no limit, but it started out fully from the outset.

So I hope that the Members of the Senate, those who are either listening or will be referred to in this argument, will see clearly that the arguments against this provision have very little to do with the provisions, and have more to do with other programs or what the opponents of the provision think it may become.

I thank the Chair, and I yield the floor.

Mr. ROTH. Mr. President, I will be very brief. I do want to make one clarification. All I was saying in making reference to the lawyers was that one could raise the same kind of question with respect to the study made by them as the distinguished Senator from Maine appeared to be making with respect to the scientific study made on this matter by a group of scientists and universities.

I was not personally impuning either one. And I think those who read them will have to make that judgment for themselves.

Mr. President, we can continue to argue the merits and demerits. The hour is growing late. I think it comes down to a matter of judgment. Those of us in opposition to this proposal are deeply concerned that what may well be what was intended to be a demonstration program will, because of the politics of the situation, turn into a full medical health program with some very novel, new legal theories. I personally think it would be a mistake to embark on such a proposition at this time, particularly when there is a lack, in my judgment, of scientific information to show the need. But it is that question which the Senate is going to have to decide in the next day or so.

Mr. President, it is my understanding that maybe there are others who would care to discuss this matter. I am not sure whether the distinguished Senator from New Mexico wants to address this problem or not. But in any event, it would be my hope that relatively briefly we could bring this debate to a close with a unanimous consent or understanding that this matter would come up for vote tomorrow, but prior to that vote there would be, I think the distinguished chairman said, a 20-minute period for debate evenly divided.

Mr. STAFFORD. If the able Senator will yield, as the manager for the bill on this side has said, it will be my intent—assuming that the minority leader agrees, and I have the agreement of the majority leader—to propose that we return to the Roth amendment at 2 o'clock tomorrow afternoon with 20 minutes of debate equally divided, and then thereafter vote. I believe that is consistent with what the able Senator from Delaware and the Senator from Maine said would be agreeable earlier in the afternoon.

Mr. ROTH. I say that is satisfactory to this Senator. I do intend tomorrow—I will not ask for it tonight unless the chairman prefers that I do so—to ask for the yeas and nays on this amendment.

Mr. STAFFORD. We anticipated that the Senator would, and I assume the Senator from Maine would in any event. I anticipate there will be a request for a rollcall vote. I think maybe we should defer that until tomorrow when there are more Senators present.

Mr. ROTH. I yield the floor.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SIMPSON). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DOMENICI). Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, without placing any further burden on my old profession, my other life, indeed we have, and I have, specially spoken here today about lawyers. That was part of my life I thoroughly enjoyed in practice for 18 years.

What I was saying, taking only a moment to clarify that, is that concerning the lawyers who wrote that report, the 301(e) report, it is not that lawyers wrote that report. They did a great job with what they worked with. But they were passing judgment on an issue they did not even attempt to show there was a need for, a specific compensation system. That is not in there. They did not even attempt to show there was a need.

They got into some things about what their training took them to, but at no point in time did they get into the specific compensation system, how could that be done. Their training could not lend them to address that issue. That is what I am saying.

But I must admit that I am puzzled now because in reviewing S. 51, beginning at page 71 through several pages of the text of the bill, is a most extraordinary health assessment, disease registry format.

I remembered that came 2 years ago. It did not come this year in debate. We took the Superfund bill this year and just moved it in without change because we knew how difficult it would be.

In any event, it does parallel what we called the agent orange registry. We have a registry of exposed persons here. I think the most extraordinarily fascinating thing to me is that on page 75 we find—and it says "shall"—"conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full-scale epidemiological or other health studies of the entire exposed population."

Then it goes on to say from the results of the pilot study "the Administrator shall conduct such full-scale epidemiological or other health studies as may be necessary to determine the health effects for the population exposed to hazardous substances in a release or suspected release."

It goes on with more "shalls" then there are "mays." With 2 years it sets what is to be determined. There is a very clear expression. Even money is in there. In fact, maybe even more money than the proposal of the Senator from Maine would entail.

I do think, though, and I hope it can assist me in an argument that can be heard, we do that first. There it is. Then take the machinery or something similar, something that we can work on, to go from there. It certainly will give us, at least as I read it, every single thing we could possibly be seeking as to the toxicity, the exposure, the limits, the minimums of medical testing of diseases and subgroups—reading from it—highest risks, mechanisms for treatment, all of that, in an extraordinary way, together with a registry of exposed persons.

I think with that, maybe we ought to go back and address that. That may be the blockbuster of the universe. I remember it went through very quickly, as I recall. Certainly, I think we ought to first come to that and then at a later time deal with the significant issue, the most important issue, how do we get that, how do we get the compensation. I think for anyone involved in this debate and those listening I commend to them page 71 through page 84 of the bill (S. 51) which indeed is something which obviously must be addressed before we get to anything such as another pilot study as to methods of relief.

First, let us do the pilot study as to the medical science aspects and exposure!

Mr. STAFFORD. Mr. President, I might take this opportunity, knowing that the minority leader is present in the Chamber, to say that it is the hope of the managers of the bill, and I can only speak personally for Senator BENTSEN and myself, but I believe Senator THURMOND will concur and at present I believe Senator PACKWOOD will concur—it is the hope of the managers of the bill that we can reach final passage on this legislation before sundown tomorrow afternoon.

I said to the most able Senator from Wyoming a while ago we are unwittingly and unwillingly beginning to threaten the length of time taken on the immigration bill.

Mr. DOMENICI adressed the Chair.

The PRESIDING OFFICER (Mr. SIMPSON). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I do not intend to talk very long. So that I do not speak too long, I will ask that I be told when I have used 5 minutes. I yield myself 5 minutes.

Mr. President, nothing has bothered me more in terms of legislation which has confounded me than this Superfund bill. I guess some would say that is impossible when you have been confronted with budget resolutions and budget deficits. But I am speaking of the substance of the legislation.

I have been on that committee for 13 years and have been involved with a number of major environmental acts, some of which I take a great deal of pride in and some of which I am not so certain about. Nonetheless, I had a pretty good feeling at the time we finished all of them.

I might say at the beginning that I probably will end up supporting this measure because we all worked on it very diligently. I am convinced, and probably I would say, that this legislation—not the amendments of the distinguished Senator from Maine, but this legislation—while it is going to cure a few of our societal evils as they pertain to toxic substances, I think I can say with almost no trepidation that probably we have just begun to visit the issue.

I see so many problems that are going to come up as a result of this legislation and our failure to adequately relate RCRA to it and a lot of other legislation that I do not see how we are going to get the job done. I will be proposing an amendment, along with my friend from Wyoming, tomorrow to try to get the settlement of these cases on the table instead of in the courts.

I am not speaking again, I say to my friend, Senator MITCHELL, to the basic bill.

I am convinced if we stay on the course that we are on, we are going to spend most of the private sector's money and substantially all of the Superfund money in litigation. At the end of 5 years, instead of 6 or 8 sites having been addressed, we may have addressed 40 or 50. But we are not going to address anything like the hundreds that are out there.

I say that by way of a preamble to my remarks.

I shall not allude to why I am convinced that is going to occur other than that we seem to be bent on almost a policy of vindictiveness. We are going to make somebody pay for this even if we do not know enough about it because there is some bad stuff out there. And I think there is some bad stuff out there.

We are not even sure how we are going to release anybody from liability in the private sector, because we do not know about the future, that even if they pay for things, we are going to give them releases. So we are going to go round and round and maybe we will come to the conclusion that every company in the private sector, large or small, that ever contributed to anything, is liable and we are going to have to go round and round on the question of insurance until we can find some solution.

I hope we will do better, but that is my general feeling. I have heard most of the debate, Mr. President, and I would argue to the Senate that if ever there was a program that is calculated to grow, it is this one. I hope that those who support it would conclude that that is correct and that maybe it ought to grow if that is their view of this.

In a nutshell, if I read the sections correctly, and I hope I have the amendments, because I think I do—I hope I do—the executive branch of Government is going to have to find these geographic areas and they are going to have to find that there is a disease or an injury for which the population of the area is placed at significantly increased risk as a result of a hazardous substance and then, (b), such disease or injury has been demonstrated by peer review studies to be associated with exposure to a hazardous substance.

I remind the Senate that I did not know how anybody is going to do that, but I guess we are just going to say "Do it."

Those sound like wonderful causation words, but clearly, we have not been able to find that kind of causation in a legal sense or we would not be here, because that kind of causation in a legal sense, proved up, would cause liability to flow and we already have the common law courts of this land-granting relief. But we are going to have some administrative people doing that.

Then, when we have that done, we are going to release the individuals from that, reimbursement of out-of-pocket costs or related medical expenses in connection with the disease—the Senator from Maine has correctly said that. That is not necessarily something that is measurable. That might be a small amount. They would have already had to find enough money to pay that to be reimbursed.

The next one is a very interesting one, because we are now going to provide a group of people with a medical insurance policy that is open ended except for the statutory limitation that we are not supposed to spend more than $30 million. Otherwise, it is unequivocal that that policy is going to be provided to that group of people and it is supposed to be subject only to an annual deductible of $500, no copayments requirement, or annual or lifetime limitation on expenditures. That is paragraph 3.

I want to make only one remark about inevitability of this program becoming a nationwide program with everyone who can fit those first two definitions that I spoke of getting this insurance policy. I would say, why not? How are we going to deny, 3 or 4 years from now, if there are 1,000 or 5,000 people who have had this policy tailor-made for them—and that is what it is going to be. You can rest assured that the insurance companies are going to draft some new kind of policy for this, because there are no such policies today. It is going to say to these people—and let us pick something—who have cancer. They may live 1 month, they may live 6 years. It may be some slow kind of disease; it may last 20 years. You have to write them an insurance policy and pay for it because we thought that that disease might have been caused by toxic substance and they are going to have that insurance policy in their pocket—if I read this right—for life. No way to cut the payments. It says that.

That means the insurance companies are going to write it instead of the Treasury paying for it, but you can rest assured that they are not going to write this out of any kind of altruism. They are going to really charge us a bundle for that absolute total coverage that is provided in that paragraph I just read.

Let me tell you, Mr. President, that is a marvelous asset for somebody to have. If, indeed, the U.S. Government owes that to somebody, I am not one down here to say we should not give everybody in this country what they are intitled to. Medicare they are entitled to. I argue that we ought to save money, but I am not trying to take people off Medicare.

But, my friends, what are we going to say when the first group of these people goes to their Senator and U.S. Representative, whether it is New Jersey, Colorado, or California, and there is a town meeting and they come there and say, "Thank you. You really treated me great. I have my insurance policy that is going to pay for all of my hospital care and nobody can restrict it, because I was one of those people."

And we do not yet know, I say to my friends and fellow Senators, that either the toxic chemical companies ought to be paying for it, it is too confused. We do not know that the Federal Government ought to be paying for it.

In fact, our friend who offers it—and he does so in absolute good faith—has tailored this from the victims' compensation that was discussed earlier in committee. But this pilot program is no pilot in that respect.

And let us follow through what is going to happen in this country. Unless and until the Government and/or the private sector proves that there never was any causation or unless and until people stop getting these very difficult diseases to diagnose causation, they will present at those nice town meetings and in their letters to us, "Why should my friend have that insurance policy that protects her against everything because she has that funny disease," whatever it is, "and I used to live by one of those places and I don't have one? There is somebody around here who is saying that there is some justification for suspecting that my sickness came from that."

Now, that is my version of why this pilot program will not work. It is a good pilot program to try to find out causation, excepting my friend from Wyoming, who is in the chair now, says there is another whole provision attempting to find causation, relationship between a chemical and a disease in the section 104 that he read, and we are going to spend a lot of money on that, just as his veterans bill did to try to determine causation in the agent orange situation.

I say to my friend, a clinic in New Mexico is screening those people on agent orange, which was unrelated to anything around here, and it is a big job, just on that one chemical.

But that part is kind of pilot, the part to put them before medical experts to screen relationships, but the part that is not pilot is whether it is 1,000 or 3,000 people who get that insurance policy that guarantees and protects them forever under that provision.

It seems to me that there is no way we are going to be able, once we are in that one, to say we are going to have to give it to everybody around that fits it because they are just as entitled to it as the group which comes under this particular provision.

Now, I am not adverse to a pilot program of that sort either, if we actually had enough information around to come anywhere close to assessing that we ought to be doing that. Frankly, there is a discussion of lawyers that is relevant. Some of it has been made on the floor. I will make another one. If, as a matter of fact, there was any reasonable relationship that we could prove as a matter of fact with modern discovery procedures, I can almost be assured that the lawyers of this country would have proved their cases. That is one not uncomplimentary or complimentary. It is merely a statement of fact. If you can ever get one of these major chemical companies before a judge or jury and have the slightest causation upon which to impose liability, under even the most evolving of common law ideas in this area, believe you me, the common law courts would have already been saying they are liable. And that is what I would say about the lawyers. They do a good job of that. Ultimately, we have to find some solutions to even that, and the Superfund is beginning to find this is fertile ground for litigation but not such a fertile ground for settlement and paying the piper for the damage we caused at these sites.

So, I do think there is a very good argument that this pilot program as indicated prior to my remarks is really not needed. There is no real reason for the Government to be doing it.

I just wanted to make my views heard as to why it is destined to become much bigger, just as a matter of common, ordinary comity to the fellow political people around here who have similar situations. That is not bad, old politics; that is not rotten government. It is very logical.

I assure you that there is no distinction being made as to black lung or any of the others, as to what State they are in. It started in States where they were devastated, where there were many economic problems, where you might want to bend over backward to help somebody. But it did not stay in one place very long, because when you interpret it, everybody got into the act, and that will happen here.

Mr. MITCHELL. Mr. President, at the beginning of his remarks and on at least one other occasion during them, the Senator from New Mexico said, "If I read this correctly," before proceeding to his conclusion. I submit to the Senate that his analysis is not the result of reading it correctly, but, in fact, he left out a major portion of the standards in the Pilot Program in order to reach the conclusion he reached.

First, the Senator referred to the requirements of the findings under the health study, of which there are three. He referred to only two of them. Let me repeat again the process by which this would work and refer to all those provisions in this legislation which the Senator from New Mexico did not refer to in his analysis of the conclusion.

First, the health assessment study must include a finding that there is a disease or injury—and I regret that the Senator from New Mexico had to leave the floor for other pressing business—for which the population of such area is placed at significantly increased risk as a result of the release of a hazardous substance. That is the first requirement.

Second, that that disease or injury has been demonstrated by peer review studies, using sound scientific and medical criteria, to be associated with exposure to a particular hazardous substance.

Third, a provision which he simply did not even mention, as though it did not exist, that there are people in that area who have been exposed to that hazardous substance in a release.

The Senator from New Mexico leaped from the first two standards of eligibility in the section to the last provision, providing benefits, and suggested that everyone in the area was eligible for that, when that is manifestly not the case, if one simply reads the provisions of the section.

The three requirements I have just stated are necessary for an area even to be eligible for participation in the program. Once they are selected by the President to participate in the program, the assistance is limited in the following way:

First, for those people, individual human beings who have been exposed to the release of that hazardous substance for which the people in that area were at significantly increased risk, they get a medical test. A doctor examines them. The doctor, or whoever conducts the examination, then concludes either that the person has symptoms of the particular disease or does not. If the result of that medical test is that the person does not have symptoms of the disease, the only thing that person gets is to participate in a group insurance policy which will pay for the cost of some of the medical tests in the future. That is all. The insurance covers the cost of medical examinations in the future to determine whether the symptoms appear at some future time.

For those persons who the medical test indicates have symptoms of the specific disease or injury—which peer review medical examinations, using sound scientific and medical criteria, will already have established are associated with exposure to that particular substance—they are eligible only for the actual out-of-pocket medical costs in the treatment of that disease or injury.

So not only did the Senator from Mexico leave out several of the limiting criteria in the legislation. He also completely ignored the fact that the legislation specifically says that such insurance coverage is to be secondary to any other coverage, private or public.

So if anyone now has a health insurance policy, as 80 percent to 90 percent of Americans do, which cover the cost of medical examinations, they cannot recover here. This is limited to those persons who have no insurance coverage in any public or private form, and it is limited to out-of-pocket actual expenses. The date upon which coverage is determined is 30 days prior to the date on which the State even applies for inclusion in the program.

So no person can possibly know in advance whether their area will be selected or not and, therefore, whether they have coverage.

Is there anyone in this Senate, is there anyone in this country who believes that people are going to go around canceling their insurance policy on the possibility that their area might be included and then once it is included that they will have symptoms of a particular disease?

Do we think people are going to rush pellmell to demonstrate that they have symptoms of a disease so that they can recover the cost of a medical exam or the actual cost of medical expenses?

So I say that the analysis by the Senator from New Mexico and his reading of it was not correct because he left out most of the limiting criteria that are contained in the legislation.

This cannot be limited in any serious way. Indeed, we are getting to the point now where the number of people eligible might be so few that it would be an insufficient number to provide a meaningful demonstration.

But this is an effort to try to do that, to try to find out if this can work, and I say that all of these comments made about what this program will become in the future and incessant attempts to associate this with other programs are misplaced and do not go to the central issue here.

Insofar as the lawyers are concerned, we had another display here of the obvious popularity of another lawyer getting up and talking about them. The fact of the matter is—I repeat this—that the analysis by the lawyers conducted concluded what everyone who is familiar with the legal system knows that there are serious substantive impediments to recovery by individuals who suffer disease or injury as a result of exposure to toxic waste, particularly if their claims are small and most particularly if they happen not to be persons of substantial means and, therefore, unable to engage in the lengthy litigation that the defendant companies participate in to defer such action.

Therefore, this independent study by lawyers concluded that there was a need for a program and recommended a comprehensive administrative scheme. In response to the comments made about what they were asked to study, they were asked to study the legal system to see if it was working for people in this category, and they concluded it was not, and they recommended a national administrative program to correct that.

We do not have that in this bill. This is not a national administrative program and it is far more limited to that recommendation; therefore, I must say that I fail to comprehend the opposition to it on those grounds.

I have repeated myself, Mr. President. For that I apologize to the Senators present and the other persons involved. I merely wanted to respond to the particular points raised by the Senator from New Mexico.

I now yield the floor.

Mr. STAFFORD. Mr. President, I think we have had a very full debate of the issues involved in the amendment by the Senator from Delaware [Mr. ROTH], and shortly it will be my intention when the minority leader has been able to come to the Chamber to propound a unanimous-consent request with respect to further debate and voting on the Roth amendment which I have described earlier.

In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. STEVENS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I see the able and distinguished minority leader, Senator BYRD, has entered the Chamber. At this time, if he concurs, I shall propound a unanimous-consent request with respect to the Roth amendment that I described earlier.

Mr. BYRD. All right.

TIME LIMITATION AGREEMENT—AMENDMENT NO. 674

Mr. STAFFORD. Mr. President, I ask unanimous consent that at 2 p.m. on Tuesday, September 24, 1985, there be 20 minutes of debate to be equally divided on the Roth amendment No. 674 to S. 51, Superfund, and that following the conclusion or yielding back of time on the Roth amendment, the Senate proceed to vote in relation to the Roth amendment No. 674; further, I ask unanimous consent that no amendments to the language proposed to be stricken by the Roth amendment be in order.

The **PRESIDING OFFICER.** Is there objection?

Mr. BYRD. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That at 2:00 p.m. on Tuesday, September 24, 1985, the Senate proceed to the consideration of the Roth amendment, No. 674, on which there shall be 20 minutes debate, to be equally divided and controlled: *Provided,* That at the conclusion of that time, or the yielding back of the time, a vote occur in relation to the Roth amendment: *Provided further,* That no amendment to the language proposed to be stricken shall be in order.

[From the Congressional Record, Sept. 24, 1985,
pp. S11995-S12034]

SUPERFUND IMPROVEMENT ACT OF 1985

The **PRESIDING OFFICER**. The Senate will now resume consideration of S. 51 which the clerk will state.

The legislative clerk read as follows:

A bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Roth Amendment No. 674, to strike the Victim Assistance Demonstration Program from the bill (Section 129).

Mr. **STAFFORD**. Mr. President, for the information of colleagues, we believe we have about three or four noncontroversial amendments we may be able to deal with within the next 17 minutes, if Members who have them could get over here on the floor or could authorize the managers of the bill to handle them for them since they are acceptable on each side, but we need the cooperation of Members to get those matters over here for disposition.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. **METZENBAUM**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

AMENDMENT NO. 677

Mr. **METZENBAUM**. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER**. The clerk will report.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 677.

Mr. **METZENBAUM**. Mr. President, I ask unanimous consent that futher reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment reads as follows:

S. 51 is amended by adding on page 84, after line 14, a new subsection (f), as follows:

"(f) Section 111(c)(6) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by inserting at the end thereof the following: Standards for health and safety protection of employees engaged in hazardous waste operations, including emergency response, shall be promulgated by the Secretary of Labor, under the Occupational Safety and Health Act, not later than one year after enactment of the Superfund Improvement Act of 1985. The cost of training such employees, in an amount not to exceed $10,000,000 per year, shall be considered a premissible cost of the program authorized by this paragraph."

Mr. **METZENBAUM**. Mr. President, the amendment pending at the desk will provide health and safety protection to workers involved in emergency and long-term hazardous waste operations.

My amendment will accomplish two objectives. First, it directs the Occupational Safety and Health Administration, the agency with lead jurisdiction in this area, to promulgate new health and safety standards for workers engaged in hazardous waste operations. Second, the amendment provides the necessary funding to establish appropriate training programs for these same workers.

This amendment is urgently needed. The proliferation of chemical and synthetic products have created a host of new hazards for workers and firefighters. Yet the workers who clean up toxic waste—and the firefighters who are called in to deal with toxic explosions—are often ill-equipped and untrained to handle these jobs safely.

Unfortunately, OSHA has done very little in this area.

They have not established any formal enforcement program to inspect hazardous waste sites. They have yet to develop regulations on environmental monitoring, medical surveillance or the training of workers involved in hazardous waste operations.

It is about time that OSHA got moving in this direction. Under my amendment, the Agency would, within 1 year of passage of the Superfund reauthorization, be required to have in place new health and safety standards for workers engaged in hazardous waste operations. It is my understanding that the distinguished chairman of the Senate Environment and Public Works Committee agrees with me that these standards should provide no less protection to workers than that which EPA provides its own employees engaged in hazardous waste activities under EPA manual, 1981, "health and safety requirements for employees engaged in field activities." I also understand that this amendment is acceptable to the chairman of the Senate Labor Committee.

Mr. President, I am also pleased about the fact that the ranking member of each of those committees handling this matter, the ranking member managing the bill, as well as the ranking member of the Labor Committee, have indicated their support of this legislation. I hope that it can be adopted.

Mr. STAFFORD. Mr. President, the current Superfund law contains requirements that standards be developed to protect the health and safety of those who work with and around hazardous wastes. Although nearly 5 years have passed since enactment, virtually nothing has been accomplished. The purpose of this amendment is to set deadlines for the proposal and promulgation of those standards and, in the event these deadlines are not met, provide protection.

We are prepared, Mr. President, on this side of the aisle, to accept the amendment which we believe is well merited.

Mr. BENTSEN. Mr. President, both the Senator from Ohio and the chairman of the committee have stated it well. What we are talking about is trying to see that the law is carried out. We put a requirement in the law in 1980, and those rules by EPA and OSHA should be promulgated now.

The Senator from Ohio has long shown his concern for the working men and women of America. Once again, it is evidenced in this legislative initiative on his part.

Speaking for those from this side of the committee, we are pleased to support it.

Mr. METZENBAUM. I thank both of the managers of the bill on both sides of the aisle. I think we are ready to act, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 677) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, before concluding this matter, I wish to publicly acknowledge the cooperation of the staff of the chairman of the Labor and Human Resources Committee, Senator HATCH. They have been very helpful in connection with this matter. I wish to publicly acknowledge their cooperation, as well as the staff of the managers of the bill on both sides of the aisle.

Mr. STAFFORD. Mr. President, I thank the distinguished Senator from Ohio for his kind words, which are much deserved as far as staff is concerned.

AMENDMENT NO. 678

(Purpose: To increase the amount which must be accumulated in the Superfund before the taxes are terminated)

Mr. STAFFORD. Mr. President, on behalf of Senator HEINZ, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], on behalf of Mr. HEINZ, proposes an amendment numbered 678.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment read as follows:

On page 125, line 2, strike out "$1,500,000,000" and insert in lieu thereof "certain amount".

On page 125, line 6, strike out "$1,500,000,000" and insert in lieu thereof $2,225,000,000 or "$3,000,000,000, respectively".

On page 125, line 11, strike out

"$1,500,000,000" and insert in lieu thereof "$2,225,000,000 or $3,000,000,000".

Mr. HEINZ. Mr. President, this is an amendment of a conforming nature. This amendment adjusts the trigger point at which collection of taxes in the Superfund terminate in fiscal 1988 and 1989 to conform to the $7.5 billion fund level as adopted by the Committees on Finance and Environment and Public Works. The triggers are to be set at $2.25 billion for fiscal 1988 and at $3 billion in fiscal 1989. The original triggers had been set to conform with the original administration's request of $5.3 billion as a funding level. The triggers set in this amendment are the product of discussions with the Environmental Protection Agency's comptroller and other interested parties. The end result of the amendment is that the unobligated balance in Superfund can be as high as $2.25 billion at the end of fiscal year 1988 and $3 billion at the end of fiscal year 1989.

I understand that this amendment has been cleared with the managers of the bill as both the Environment and Public Works Committee and the Finance Committee. I ask that the amendment be agreed to.

Mr. STAFFORD. Mr. President, I am prepared to accept the amendment.

Mr. BENTSEN. Mr. President, speaking for the minority, on the Finance Committee, this has been cleared with the ranking member and the staff has examined it. We think it is a helpful amendment and support it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 678) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 679

(Purpose: To provide for a postclosure liability program study, a report to Congress, suspension of the liability transfer, and a refund of the unobligated balance in the postclosure liability trust fund if further congressional action has not been taken within 1 year)

Mr. STAFFORD. Mr. President, on behalf of Mr. HEINZ, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], on behalf of Mr. HEINZ, proposes an amendment numbered 679.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the title I add the following new section:

POSTCLOSURE LIABILITY PROGRAM STUDY, REPORT TO CONGRESS AND SUSPENSION OF LIABILITY TRANSFERS

SEC. . (a) Subsection (k) of section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new paragraphs:

"(5)(A) The Administrator shall conduct a study of options for a program to finance the postclosure maintenance of hazardous waste treatment, storage, and disposal sites in a manner which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

"(B) A report setting forth the conclusions of such study and recommendations of the Administrator shall be submitted to the Congress not later than March 1, 1988.

"(C) The study shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities, and for different classes of land disposal facilities, and shall include but not be limited to—

"(i) the current and future financial capabilities of facility owners and operators;

"(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

"(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including postclosure costs, will be financed.

"(D) The recommendations of the Administrator shall include assessments of various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

"(i) revisions to closure, postclosure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

"(ii) voluntary risk pooling by owners and operators;

"(iii) legislation to require risk pooling by owners and operators; and

"(iv) modification of the postclosure liability trust fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators.

"(6) Notwithstanding the provisions of paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the postclosure liability fund previously established by section 232 of this Act prior to completion of the study required under paragraph (5) of this subsection, transmission of such study and report to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.".

On page 160, between lines 13 and 14, insert the following:

(d) Refund of Unobligated Balance.—An amount equal to the unobligated balance in the postclosure liability trust fund as of October 1, 1985, which is transferred into the Hazardous Substance Superfund pursuant to section 9505(b)(2) of the Internal Revenue Code of 1954, shall be paid out from such Superfund, effective March 1, 1989, as refunds of the taxes paid under section 4681 of such Code (as in effect prior to October 1, 1985), unless, prior to March 1, 1989, congressional action has been taken pursuant to section 107(k)(6) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such refunds shall be paid on a proportional basis to the amounts of such taxes paid, and without interest.

Mr. HEINZ. Mr. President, my amendment would require a study of postclosure liability programs. The study would examine a wide variety of factors associated with the liability of hazardous waste sites after they are closed, including the maintenance of hazardous waste treatment, storage, and disposal facilities, the financial capabilities of these facilities, their costs, and the mechanisms used to ensure that both current and future costs of the facilities will be financed.

My amendment directs the Environmental Protection Agency to perform this study by March 1, 1988. From that date, the Congress will have 1 year to act on the study and authorize a program to assume liability for postclosure maintenance. Moneys already collected under the postclosure liability trust fund will remain in the Superfund pending the results of the study and congressional action. Transfer of liability to the current postclosure liability trust fund will be suspended, unless the Congress authorizes such a program. If the Congress does not authorize such a program, the moneys paid into the fund will be refunded proportionally to the companies that paid them.

During the Finance Committee markup, I offered an amendment to repeal the taxing authority for the postclosure liability trust fund. This amendment, which was unanimously accepted, was based on the rationale that the fund was at odds with the basic principle of Superfund—that the liability for hazardous waste facilities should remain with the solvent responsible parties. The fund in effect transferred this liability to the Federal Government. Although I remain convinced that the fund as currently constructed is unsatisfactory because it contradicts the main principle of Superfund, I believe that the Fund does address an important issue—the problem of orphaned hazardous waste sites in the future. As this problem is prospective, my amendment provides the opportunity for the EPA to examine alternatives to the current fund so that the Congress can revisit the issue in 3 years with more thorough information.

It is my understanding that this amendment has been cleared with the managers of the bill on both the Environment and Public Works and Finance Committees. It is also acceptable to the environmental community and the waste management industry. I ask that the amendment be agreed to.

Mr. STAFFORD. Mr. President, I know of no further speakers on this side.

Mr. BENTSEN. Mr. President, we have no further speakers on this side. There is no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 679) was

agreed to.

Mr. STAFFORD. Mr. President, I move to ~~reconsider the~~ vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, may I reiterate what I said last night, that it is the hope of the managers of the bill on both sides that we may reach final passage before the afternoon is out. I remind Members that there will be a vote probably at 2:20 p.m. on the Roth amendment, which I expect to be a rollcall vote.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon having arrived, the Senate will now stand in recess until the hour of 2 p.m.

Thereupon, at 12 noon, the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GOLDWATER].

AMENDMENT NO. 674

(Purpose: To strike out section 129 relating to Victim Assistance)

Mr. GOLDWATER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will now proceed to the consideration of the Roth amendment, No. 674, on which there shall be 20 minutes' debate, to be equally divided and controlled.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I yield myself 3 minutes. I shall be brief.

Before I start, I want to bring to the Senate's attention the editorial from the Washington Post which has been placed on each Senator's desk which appeared yesterday urging the deletion of the Victim's Assistance Demonstration Program. This editorial makes clear why we should not support such a program as it points out that in a new study by a consortium of leading universities reports that at only one site is there now evidence supporting a link between exposure and serious health efforts. So we lack the necessary scientific underpinning to undertake such a new program.

Two, this program would not—would not—be a mere demonstration program once initiated. The health monitoring and compensation benefit policies funded by the program would likely provide benefits for decades. The program would be politically very, very difficult to keep from expanding. The Office of Technology Assessment estimates that we may have 10,000 hazardous wastesites across the country. How are we going to avoid the pressures to set up such program at every site?

Three, the cost of this new national health program would be astronomical, and would divert necessary resources and attention away from Superfund's primary purpose of cleaning up wastesites. Anyone who is exposed and has any symptoms of injury of disease will demand to be reimbursed for past and future expenses with no limits. We will not be able to cancel this program after 5 years.

Fourth, we are embarking on a whole new legal concept based on insufficient scientific evidence and causation controversies. To statutorily determine that persons should be compensated for illness they claim to be connected to toxic waste exposure ignores our common law traditions. To establish such a precedent could have serious implications for the court system and various administrative compensation programs that deal with toxic waste exposure.

The Finance Committee refused to authorize funds for the program. I believe everybody in this body, including the Senator from the State of Delaware, has a great deal of sympathy for those potentially exposed to the effects of toxic wastes. So the plain and simple fact is that Treasury simply cannot afford the potentially very large expenditures that this program is likely to incur.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. ROTH. In closing, Mr. President, I reiterate again, as the Washingto Post has said, that this is a program that should be deleted in its entirety.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, how much time remains?

Mr. ROTH. Mr. President, we yield 3 minutes.

Mr. SIMPSON. That is fine. Thank you very much. I appreciate the Senator from Delaware.

I speak in favor of the amendment. The debate has been rather wholesome. We had it all yesterday. It is a pilot program. It will not remain a pilot compensation program. And we will, if we should leave the language in the bill, have an extraordinary duplication without question because if you will take a close look at section 104 of the bill, S. 51, you will find the health assessments provided for, health studies mandated, comprehensive health reviews, formulation of disease registries which I gather will be very much like the agent orange studies which we have proposed in other legislation. We are going to find it very duplicative, very wasteful, and we are going to find the complete abrogation of tort law as we know it in the United States. That is what we are going to find. We use phrases like chemicals associated with the wastesite, associated with the illness, and associated with the disease. There is no criteria, and no standard for causation. Without a standard for causation the determination becomes totally subjective. It is a blockbuster. The amendment indeed would not create a legally recognized entitlement program but I can assure you it will be politically an entitlement program without question. It will be very difficult to ever cut back or sunset such a program. We can go look at black lung, longshoremen's comp, whatever you want to look at, and whether we will ever break away from this one. But I think the telling point for me yesterday is we are talking about 250-plus substances that are relevant hazardous substances. We have almost exhausted ourselves on just one in the United States, and that is agent orange dioxin.

We have 67 studies on agent orange, costing $150 million to this Government on one chemical substance—dioxin. We found people in that category who had total exposure. The people in the ranch hand study had it cover their skin and their bodies, and there is no greater incidence of disease or deformed children sired by that group, in that control group, and it is a well identified group. That is where we are.

Now try that one with 250-plus hazardous substances; and we will see a totally unworkable piece of legislation. Let the bill work first—the health assessment—and then come to compensation if that is required but not here and now now.

The PRESIDING OFFICER. Who yields time?

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. Mr. President, I yield myself 3 minutes.

I would like now to make these points:

First, the Senator from Delaware, is moving to strike a provision contained in the committee bill. Originally, this provision was offered by Senator MITCHELL, but it is no longer just his proposal. It was adopted, with no dissent, by the Committee on Environment and Public Works. This bill, which it contains, was ordered reported by a vote of 14 to 1.

This proposal is the result of committee hearings, committee deliberation, committee findings, and committee approval. This is not a proposal advanced by one Member of the Senate, but one advanced by a committee.

Of course, the final decision on this proposal rests with the full Senate. I hope it agrees with the committee recommendation.

Every other industrialized nation in the world except the United States has acted, generally or specifically, in this area.

Fifteen years ago, the water and air in this country were so dirty that environmental protection was established firmly as a national ethic. We debated helping victims, but failed to act.

A few years later, the farmers and residents of Michigan pleaded for help from the Congress after thousands of men, women, and children ate and drank foods poisoned by a fire retardant.

But the Congress chose to do nothing for these victims.

A few years later, in 1980, we enacted the Superfund law. But, again, instead of passing a program to help the victims of Love Canal, Valley of the Drums, and Bloody Run, we did nothing for them. Instead, we enacted a study.

That study has been belittled here, but 5 years ago Members of the Senate who demanded it said they would listen to its results.

Those results have been in for 3 years. But now the same Members who asked for the study in 1980 say its conclusions are invalid. The study group recommended that the Congress act to help victims.

But what is before the Senate is not the recommended program to help victims. Instead, it is less, a pilot program designed only to see if we should help victims.

Perhaps if the number of these victims is large, this program will eventually be large. I do not know.

But I do know this:

We cannot avoid answers by refusing to ask questions.

This provision has been more debated than any other in the bill. Yet the worst that can be said of it is that there may be thousands of victims.

If that is so, Mr. President, it is a compelling reason to vote for it, not against it.

I will vote against the amendment of the Senator from Delaware and hope the Senate will do the same.

But whether the Senate's answer today is "yes" or "no", the people deserve to know where we stand.

If that is all, Mr. President, it is a compelling reason to vote for it, not against it. I will with respect vote against the amendment and hope the Senator from Delaware will do the same. Whether the Senate's answer today is yes or no, the people deserve to know where we stand.

Mr. President, I yield——

Mr. MATHIAS. Will the Senator yield to me for a brief moment before he yields the floor?

Mr. STAFFORD. Yes.

Mr. MATHIAS. Mr. President, I want to associate myself with the remarks of the Senator from Vermont.

Mr. President, the Senate is grappling with legislation which is one of the most complex and potentially most costly in the area of environmental and public health protection.

As the full size of the toxic waste problem looms before us and some of its ramifications become clearer, we must make some very difficult policy choices. Virtually all of them involve money.

How much are we willing to spend to clean up our toxic wastes? How far should we go? How permanent must the cleanup be to assure the continued good health of our children and our children's children? How do we fix responsibility for our sins of the past in creating such monumental and dangerous waste? How far does that responsibility extend? Just to cleanup? What about those harmed by these toxics, whose health is impaired and life expectancy shortened?

These very difficult public policy issues were wrestled with during this and the previous Congress by my able colleagues on the Environment and Public Works Committee under the wise leadership of Senator ROBERT STAFFORD, their chairman. They argued these issues, gave them long and careful thought, and came to their conclusions. Those conclusions are now in the bill before us, S. 51, the Superfund bill, also known as The Comprehensive Environmental Response, Compensation, and Liability Act.

One of the provisions included in that legislation and reported favorably was a small demonstration program to compensate specific victims of toxic waste released into the environment. It is an effort to determine who those victims are and establish a direct cause and effect, if such exists, for their illness.

I would remind my colleagues of the formal title of the bill before us: The Comprehensive Environmental Response, Compensation, and Liability Act.

This victim compensation demonstration is an attempt to make Superfund what it was intended to be—comprehensive and compensatory. The whole reason for cleaning up these toxic sites is, as the Superfund law states, because of the "imminent and substantial endangerment" to public health.

So we already are acting here because of our concern for public health. The victim compensation demonstration provision of the bill before us acknowledges our responsibility to our fellow Americans who had the misfortune to be exposed to toxics in our environment and whose health is substantially impaired as a direct result.

I commend Senator STAFFORD and Senator MITCHELL along with their colleagues on the committee who had the courage to acknowledge this responsibility and attempt to do something about it in the form a very limited and strictly structured Victim Assistance Demonstration Program.

● Mr. SYMMS. Mr. President, I opposed section 129 of Senate bill 51 in both the Environment and Public Works Committee and the Finance Committee. At this time I am obligated to reiterate my opposition to this section and review some of the reasons for that opposition.

First, however, I must make clear that opposition to the "Victim Assistance Demonstration Program" is just that. It does not mean that I am disinterested in, or unsympathetic toward, the plight of innocent victims of diseases caused by exposure to releases from Superfund sites.

It does mean, however, that I recognize the near-impossibility of isolating, or even identifying, the victims described above. As a matter of fact, at this moment I honestly do not know if there are any victims of diseases caused by exposure to releases from Superfund sites. Maybe, it should not be too disturbing that I do not know of any victims of Superfund related diseases. What is disturbing is that its extremely doubtful if any of the leading authorities in the field of environmental health—of diseases if you prefer—can furnish an accurate estimate of the number of people in the category of "victims of Superfund related diseases."

Presumably the purpose of the so-called "Victim Assistance Demonstration Project" is to determine how many people fit in this category and how much help they need. It is very difficult to speak against such a noble purpose. In fact, I guess none of us can speak against that purpose. However, we can and should speak against this program as a method of accomplishing that purpose.

My first concern is that any kind of victim compensation should be entirely separate from Superfund. After all, Superfund was founded to cleanup toxic waste sites. Certainly, that is a monumental charge in itself. If we add on to that chore a victims compensation or assistance program and who knows what else—maybe a victims retraining program or a victims cultural enhancement program—the hazardous waste sites simply will not be cleaned up.

From the testimony I have heard from the scientific and medical communities it is clear that we do not have the ability to determine if a specific incident or even group of incidents is related to Superfund-associated exposure.

The easy answer to that, of course, is error on the humanitarian side. Does it really matter if we include, under victims assistance, cases that are really not related? It should not. After all, none of us would be willing to have anyone suffer without fair—and even generous—assistance if that assistance is deserved.

However, that is the kind of reasoning that led in to the black lung program paying benefits to more than twice as many people as were employed in coal mining at more than 30 times the cost originally projected.

We already have a fairly comprehensive system of health insurance and workers compensation. Embarking on the kind of demonstration program envisioned may or may not adequately and fairly compensate victims of Superfund-related diseases.

One thing is certain. If we leave this section in Superfund we better hope it works very well. It is virtually certain that it will cost vastly more than projected, lead to endless litigation and instances of perceived, if not actual, injustice. Once in place such a program would grow almost from birth, with almost no chance of arresting the rapidly escalating costs. As to the chances of eliminating the program if it proves unworkable or unnecessary—that seems beyond the realm of possibility. It is also certain that that bureaucracy managing the program will be with us from now on.

Section 129 has many serious flaws. I have only hit the high points of several of the more obvious flaws. I urge my colleagues to temper their compassion with good judgment and delete section 129 from the Superfund legislation.●

Mr. EAGLETON. Mr. President, today I oppose Senator ROTH's amendment to delete the Victim's Assistance Demonstration Program from this year's Superfund bill.

I believe that it is time for this Nation to learn what kind of health problems our citizens' may experience because of exposure to hazardous substances.

There are still Missourians temporarily relocated from their homes and neighbors because of a tragic dioxin spraying conducted years ago. A complete town is now a ghost town, as a result, and the name Times Beach has become code words for disaster. While the Government is willing to shuffle citizens around and establish new homes for them, the Government is not willing to address personal health problems. These health problems cannot be left behind, but will follow them where ever they relocate.

If we are lucky, the medical listing and screenings will show we over-reacted, and our citizens have only minor ill effects. We will have erred on the side of safety. In the worst case, however, we will have established a thorough medical listing and program to be shared with future hazardous waste victims and doctors that may help diagnose the early signs of more serious illnesses.

Back in June 1983, I introduced an amendment during the HUD-independent agencies appropriations debate calling for initial screening and, when necessary, full medical testing for the employees at three Missouri freight truck yards on EPA's confirmed dioxin list. The amendment provided up to $1 million in Federal funds to be set aside to administer medical tests to dioxin-exposed workers. The amendment passed and I am proud to say these workers were tested.

We do not adequately address the problems of toxic waste if we do not also address the human needs involved. This pilot program is well worth its effort and relatively minor cost to protect our citizens from not only immediate dangers, but from the ones that may confront them further down the road.

Mr. STAFFORD. Mr. President, I yield the remainder of the time of the opponents of the amendment to the Senator from Maine.

The PRESIDING OFFICER. Mr. MITCHELL.

Mr. MITCHELL. Mr. President, I yield 2 minutes to the Senator from Minnesota in opposition.

Mr. DURENBERGER. Mr. President, I rise today to speak against the Roth amendment. I am in favor of including an authorization for a demonstration program to assist people who have been exposed to hazardous substances at Superfund sites with their medical expenses in this bill.

Mr. President, I am a member of both the Finance Committee and the Committee on Environment and Public Works where this legislation has been proposed and considered. And so I have studied it carefully. I am also chairman of the Health Subcommittee of the Finance Committee which has jurisdiction over the Medicare and Medicaid Programs. Those programs are health entitlements. This program is not. This is a demonstration program authorized for a limited period of time and for a limited purpose.

I must confess that when Senator MITCHELL first offered this amendment 2 years ago, I spoke out against it. I was concerned that it would create very different levels of expected compensation across the Nation, much as has happened with the Social Security Disability Program. My views on that difficulty have not changed. But the amendment has been modified, so that concern is no longer relevant. The program is now focused on sites rather than States, so my concern has been addressed.

In a similar way many other problems have been dealt with through amendments to the original language. I encourage Members to pay special heed so that they will understand the actual provisions that are in the bill as reported, and not cast their vote according to what they may have heard about victims' assistance in the last Congress or years ago, nor what they may have heard about agent orange, dioxin, or any of the other things that have been spoken about. I say again, I was a skeptic. I did not want a new Health Care Entitlement Program. I understand health care entitlements. And this is not one. It is a demonstration program for assistance to people at Superfund sites. And I support it.

Mr. President, the Senator from Maine has often made the point that if you own a tree or a stream or some other natural resource, you can file a claim against the fund for compensation if that resource was damaged by the release of a hazardous substance. But if it is your health—or the health of your children—or your ability to earn a living that was damaged, then Superfund is not for you. People that are injured by hazardous substances are thrown back to reliance on a crazy quilt of State laws that put hurdles in the way of compensation for toxic torts at every turn. That is upside down, Mr. President, and I commend the Senator from Maine for recognizing the tragic irony of current law and for persevering so effectively by insisting that we, at least, examine the possibility of providing justice to people who are victims in a more effective and efficient way.

I urge that the amendment to strike be defeated.

Mr. MITCHELL. I yield 1 minute to the Senator from New Jersey.

Mr. BRADLEY. I thank the Senator for yielding.

Mr. President, I rise to urge the Senate to oppose the amendment offered by the distinguished Senator from Delaware, Senator ROTH. Clearly, the prime objective of any Superfund legislation is to obtain the money and the authority to clean up toxic waste dumps across this country. The bill that we are now considering has an enhanced capacity to do that and much more funds to do that.

But in addition to that, Mr. President, I think it is quite justifiable that we have in this bill a small pilot program on victims' compensation. This is not a major new entitlement. This is not anything close to national health insurance. This happens to be a very specific, narrow test that says that those individuals who have been endangered and indeed harmed and are ill because of exposure to a toxic waste site will have some access to getting victims' compensation.

It is a very narrow bill, it is a very narrow amendment, and in this case I think it fits very well with the overall Superfund concept. I strongly support what the committee did after long negotiations and discussions. I recognize that what the committee did is different than what it has done in the past. I urge that we reject the attempt to strike these new words.

Mr. MITCHELL. Mr. President, I yield 1 minute to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise also to oppose the amendment of the Senator from Delaware. The fact of the matter is, Mr. President, that the proposed pilot program for victims that is in the bill has been tightly drafted, and targeted to the neediest people in our society. We have a $7.5 billion Superfund Program that allows compensation for damage to public property. We have to ask ourselves, what about human beings?

The fact remains that generally it is the poorest individuals in our society who are living in neighborhoods which have been exposed to toxic waste. If they have the resources, if they have the money, they are able to move out to where there are green trees, bushes, flowers, and clean water.

The fact remains that there are millions of people who live in industrial areas and other areas who are exposed to the dangers of toxic waste; 35 million people in our society have no health insurance whatsoever, so many, a great number, of hazardous waste victims are without any insurance coverage for out of pocket medical expences. In response the bill contains a pilot program targeted to the neediest people in our society who, as a result of toxic waste, are going to have an adverse health impact, which in many instances results in cancer. In one town, Woburn, MA, they have the highest incidence of leukemia among children of anyplace in the country.

Indeed, I have traveled to a number of communities in Massachusetts and across this Nation, and I have met with people who have had to live in the shadows of toxic waste dumps—people whose heartbreaking stories I will never forget.

I have seen the tears, heard the cries, and felt the pain of families who, sadly, are not unique. Their stories are repeated throughout communities across this country. And yet so far we have neither eliminated the danger nor compensated the victims for the pain and suffering which has been such a part of their lives for far too long.

The provision for compensation of victims was dropped from the original Superfund bill in 1980. Instead, Congress buried its head in the sand and settled for a study of victims compensation. Well, the study was completed 3 years ago. Its central recommendation was to create an administrative system of compensation, because many, if not most people face insurmountable barriers in State courts to recovering damages due to hazardous waste.

The Superfund bill before us does not fully implement that recommendation. That is what the Environment Committee report says. That is what my friend, Senator MITCHELL, said the other day on the Senate floor. That is what all of us here know.

The bill contains only a very limited, watered down, hardly funded at all pilot program that at best can be used in 10 States. And as has been said it is available only for victims with no other recourse, who lack both public and private insurance. I agree with Senator MITCHELL, and I hope many others, that such a program could be and should be operated in every State of the Nation. No State is immune from the human health threat of hazardous substances in the environment.

The demonstration program is a bare minimum, designed to provide at best a safety net for those who are truly without any where else to turn when injured by a toxic chemical.

I would have hoped, after 5-year wait, we could have done better. We must do more.

But even this tiny, pilot program is too much for some who want to strike any hint of victim assistance from the bill. We know that this submicroscopic trial program has caught the eagle eye of OMB. It is targeted for elimination. We are told that there is no room in the multibillion-dollar Superfund Program for even a $30 million a year trial victims program. I disagree. I hope that this amendment will be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 1 minute to the distinguished Senator from Wyoming.

Mr. SIMPSON. Mr. President, I wish to add a dimension to the debate at this late moment, that things do come out in the Environment and Public Works Committee with unanimous votes at least with this Senator. The reason for that is that if you cast a negative vote on the Environment and Public Works Committee you get thrashed all over America for about 8 months. It is not worth going through for that. The minute I vote a negative vote in the Public Works Committee, they hammer my old bald dome flat in Wyoming. It did not take me long to get wise that I ought to just vote for it, in committee regardless of the way it looks, because the only place for me to do my work is on the floor of the Senate. This bill is a classic example of that. That is no reflection on our chairman, who has been very fair with me in extraordinary ways. But it is the reality of the situation when you deal with issues of high volatility, emotion, fear, guilt, all the stuff we get, anecdotal incidents. I wish we could compensate them all, but that is not the way it is in the real world. You will either tap away the Treasury or the Superfund without this amendment. Without this amendment, that is exactly what will happen.

Finally, I would ask unanimous consent that a recent article authored by one of my staff members be placed in the RECORD. This article was written by Jim Strock—a most able and informed member of the committee staff—and it contains commentary on the victims assistance issue that is well worth reading.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COMING TO TERMS WITH THE COMPENSATION CONUNDRUM

(By James M. Strock)

(This article is condensed from the winning entry in the 1985 Ross Essay Contest. The topic was "What remedies should be available for victims of mass torts and mass disasters?" In addition to the award of a $10,000 cash prize and publication in the ABA Journal, the author participated in a program on the topic of toxic torts at the American Bar Association annual meeting in Washington, D.C., last month.

(For information about entering the 1986 Ross Essay Contest, see the announcement on page 13 of this issue.)

The 1980s may well be the "decade of tort law," much as the 1960s was the "decade of civil rights," as some tort lawyers suggest. Certainly the rapid growth, primarily through state court decisions, of that part of the law called "toxic torts" has begun to raise fundamental questions concerning the ability of tort law to achieve its goals of compensation, deterrence and risk-shifting.

In the future it may appear that the tragic events in Bhopal, India—where an accidental release of a dangerous chemical caused more than 2,000 deaths and 200,000 known injuries—led to more careful consideration of the issues presented by toxic torts. Such a disaster, had it occurred in America, could have implicated nearly every issue that has tormented our legal system as it has attempted to come to terms with the challenges posed by environmental tort claims.

CATALOG OF COMPLEXITY

If such an event were to occur here—not an unthinkable prospect given the two releases at Union Carbide plants in West Virginia last spring—we can foresee the categories of tort claims that might arise.

The first claims would arise immediately after the incident. A large but well-defined group of people would seek damages for death and injuries.

The more difficult question would arise in connection with injuries alleged to have occurred some time after exposure to a hazardous substance. In one category of cases, individuals might seek to show a causal nexus between their injury and exposure to a specific substance. These plaintiffs would face a series of legal barriers related to the passage of time. Situations would arise that are analogous to the DES and asbestos cases of recent years—where the causal nexus is relatively clear, but issues related to the passage of time, sometimes including uncertainty as to the identity of the specific actors responsible for any specific individual's injuries, would combine to challenge the efficacy of the tort system. There might also be cases analogous to those involving Agent Orange and radiation exposure, where there is convincing statistical evidence of injury to members of an exposed population, but great uncertainty as to whether a specific individual's diseases could be attributed to the exposure in controversy.

Finally, there might be situations similar to those now found at some hazardous waste sites. In these situations all the difficulties of other types of mass tort cases are combined, and additional difficulties arise as well.

Naturally one hopes that such a catalog of complexity would not arise. But it may be useful to begin by thinking about the "compensation conundrum" in this context. In so doing we will be reminded that similarly situated individuals may receive widely varying degrees of compensation and will have dramatically different avenues of redress. Accidents of genetics, geography, age, sex, wealth, luck and other factors unrelated to the question of who needs compensation for disease are now critical in deciding who actually receives compensation, and of what that compensation might consist.

The tort system is a necessary component of any system designed to meet the goals of compensation, deterrence and risk-shifting in the environmental context. We should consider the whole matter of toxic torts in a broader context—beginning with a more focused use of existing regulatory and compensatory tools that our society now uses to supplement the tort system.

"TRADITIONAL" MASS TORTS

The tort system can work well in the Bhopal type of situation, where the injuries immediately follow exposure, and the causal link between the act of the defendant and the consequence to the plaintiff is "direct" both as a matter of fact and law. In these cases the tort system's basic substantive requirements can be met.

To be sure, there are significant procedural questions that lead to immense complexity in litigating mass torts. But mass tort actions can resolve claims arising from disasters and their immediate aftermath—whether airline accidents, hotel fires or chemical releases—because the substantive elements of tort law are not placed under stress. The biggest questions are either those of system delivery or the compensation that an enterprise should be required to provide. These questions are difficult and may be contentious, but they are the kinds of questions traditional in tort law.

TOXIC TORTS—TYPE ONE

Questions about the effectiveness of the tort system as a means of meeting its own goals emerge when the substantive elements of the system are placed under stress. These questions arise in the area of toxic torts largely because of the time lag between an exposure and the onset of the alleged injury from the exposure.

A Bhopal-type disaster could be followed by suits alleging that the exposure perhaps 15 years past, caused the onset of a disease only lately manifest. A putative victim would not have been successful shortly after the actual incident in seeking damages for increased risk of injury, because an actual injury is a substantive requirement of tort law. But later, if he could link a long-latency disease with an exposure, he theoretically could recover.

There are no "easy cases" in the area of long-latency disease claims, but those in "type one" are more likely to succeed than others. This area could include many of the asbestos cases involving asbestosis, and mesothelioma—where there is a relatively strong causal nexus between an exposure to a substance and the disease or injury of the victim.

A recent study conducted by the Rand Institute for Civil Justice identifies the "salient dimensions" of the asbestos litigation problem:

Widespread and diverse uses of asbestos products.

Large numbers of lawsuits and allegedly seriously injured people.

Long periods of time between exposure and manifestation of injury.

Large numbers of suppliers and processors of asbestos and asbestos-containing products.

Uncertainty about the causes of injuries and financial responsibility for those causes.

High, if uncertain, stakes and expenses.

Effects, known and unknown, of Chapter II bankruptcy reorganizations.

Many of these factors appear in almost any toxic tort situation. But the asbestos litigation, at least in some cases, is less challenging for the tort system than some other types of cases. That is a result of comparative factors: causation may be relatively clear; the exposure itself was of relatively long duration and documentation may be available: some asbestos products can be differentiated so that specific manufacturers may be linked with individual exposures and injuries: and the extraordinary commercial success of the product means that some "deep pocket" defendants have remained in existence after the passage of time required for disease latency.

As a result, the tort system can work in this situation, although the passage of time between act and resulting injury makes it less effective. In these cases, the biggest questions may relate to the types of damages that should be made available and the degree of liability society wishes to attach to the defendants.

Nonetheless, there are several recurring situations in the asbestos context that may make the tort system less applicable. When the disease may have resulted from factors other than exposure to asbestos—with lung cancer, for example—it becomes extremely difficult to meet the "but for" legal causation requirement. Some scientists would say it is altogether implausible.

The other problem that arises in some asbestos cases, and in the DES cases, is that the specific actor who caused the injury to the plaintiff cannot be identified. This occurs when the products of various manufacturers are indistinguishable from one another. As a result, the substantive tort law requirement that the act in question be linked to a specific defendant cannot be met. While recognizing that this situation is distinguishable from *Summers v. Tice*, 199 P.2d 1 (Calif. 1948), some courts have nonetheless attempted to shift the burden of proof to defendants in such situations. In this context, the notion of alternative liability has been adjusted, as in *Sindell v. Abbott Laboratories*, 607 P2d. 924 (Calif. 1980), which adopted a notion of "market share liability." There has been a great deal of commentary concerning *Sindell* and its progeny. But amidst all of the controversy, there can be little doubt that one of the substantive elements of tort law is under significant stress in this situation—and as a result, the goals of the tort law system cannot be met as effectively as in more traditional situations.

TOXIC TORTS—TYPE TWO

The second general type of toxic tort involves situations like the asbestos suits seeking damages for lung cancer. In these cases, a plaintiff alleges that the action of the defendant increased the risk of disease or injury for a group of individuals of which the plaintiff is a part, and that plaintiff's disease is a result of that increased risk. If the actions of a defendant have increased the risk of cancer to a degree that three people from a group of a million would contract the disease in addition to whatever the initial "background level" was, the plaintiff would try to demonstrate that he or she was one of the subset.

The problem here is that it is often scientifically impossible to distinguish causative factors in this situation, at least to a degree that would allow the courts to establish causation in the legal sense. That being the situation, individuals' chances of recovery become hard to predict, even if their cases arise from the same set of facts.

In a recent important case, *Allen* v. *United States*, 588 F.Supp. 247 (1984), a number of plaintiffs successfully sought damages for cancer and leukemia allegedly caused by their exposure to radiation from federal government testing of nuclear weapons. The judge dealt at length with the question of causation of carcinogenic risk, finding that, "The intrinsic nature of the alleged injury itself thus restricts the ability of the plaintiffs to demonstrate through evidence a direct cause-in-fact relationship between radiation from any source and their own cancers or leukemias. At least within the scope of our present knowledge, the injury is not specifically traceable to the asserted cause on an injury-by-injury basis."

Citing *Summers* v. *Ice*, *Sindell* and other cases, the court also held that where the conduct of the defendant is a "substantial factor" in the injury to the plaintiff, but the evidence will not establish that defendant's action was the cause-in-fact, the burden should shift to the defendant to demonstrate that its conduct was not the cause of the injury.

The court held, "Where a defendant who negligently creates a radiological hazard which puts an identifiable population group at increased risk, and a member of that group at risk develops a biological condition which is consistent with having been caused by the hazard to which he has been negligently subjected, such consistency has been demonstrated. . . . [A] fact finder may reasonably conclude that the hazard caused the condition absent persuasive proof to the contrary offered by the defendant."

In the radiation case, as in the Agent Orange litigation, the traditional causation requirement has been eroded signficantly in an attempt to use tort law to compensate for an alleged environmental harm. But these cases, while troubling, are not as difficult as some others. In each of these situations, the alleged injury-causing substances or conditions were limited in number; there were identifiable defendants; exposures were relatively well-documented; the exposed population was relatively well-defined; and the potential political and legal consequences for the federal government led to the production of state-of-the-art scientific studies on the effects of the substances in question.

TOXIC TORTS—TYPE THREE

The most vexatious toxic torts are found in suits seeking damages for injuries from exposure to hazardous waste sites. These situations can be compared with the radiation case in terms of causal indeterminacy—but they have their own additional difficulties, including:

Uncertainty as to the identity or solvency of potential defendants.

Uncertainty as to the identity, number and characteristics of hazardous substances involved.

Uncertainty as to the potential synergistic effects of various hazardous substances acting together.

The possibility that a release may have triggered an immune system disorder, causing the victim to fall prey to diseases normally unrelated to exposure to the specific substances in question.

The inability of the legal system to judge which of several hazardous substances can be considered the cause of injury to any individual.

Uncertainty as to the link between a specific defendant and the substance alleged to have harmed a plaintiff.

Uncertainty as to the duration and pathways of exposure in individual cases.

Lack of cooperation from defendants and potential third-party defendants fearful of their liability under a strict, joint and several liability standard.

Ambiguity about the extent that a group alleging injury has "accepted" the risk of injury.

This type of toxic tort has been the subject of great public and political attention, stemming largely from the Love Canal situation immediately preceding the passage of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, also known as "Superfund").

Some partisans of increased compensation for alleged victims of this type of exposure have come to realize that significant alterations in tort law would be required to overcome the problem of causation. As a result, some legislation has proposed, along the lines of the *Allen* case, but the burden of proof as to causation shift to the defendant after a threshold showing of exposure by the plaintiff. These proposals implicitly acknowledge the causation question, but merely shift what is now an untenable burden for plaintiffs, believing that the burden is better left with business enterprises which, presumably, have greater financial resources.

Legislation has also sought to change the Federal Rules of Evidence to allow the introduction of medical studies that are not admissible under present limitations. Others would also create, along with a federal tort, a federal statute of limitations that goes beyond the discovery rules of most states, with an entirely malleable standard tolled not merely by the discovery of the disease but also by its connection with the hazardous substance.

Some proposals would institute an alternative administrative system, which might be used in lieu of tort remedies, and would attempt to deal with proof of causation through presumptions. The problem is that any presumptions and criteria for eligibility can be adjusted, as in the "Black Lung" compensation program, leading to widely varying results. Still, the fundamental question of causation in a legal sense is not dealt with, and under- or overcompensation remains all but unavoidable.

These proposals also have significant implications for related avenues of compensation (especially public and private medical insurance), and for government regulatory policy (as in proposals that a regulatory agency such as the EPA also be responsible for administering a compensation program related to the very issues on which it makes regulatory decisions). These implications combine with the matter of societal fairness—that similarly situated people will be treated differently—to render such approaches undesirable.

CONCLUSIONS

The fundamental problem underlying the compensation conundrum is that legal requirements of causation are not consonant with scientific information about long-term health effects from toxic exposures. Removing procedural barriers to tort recovery is insignificant in the face of the fundamental question of causation. "Reforms" that would shift an impossible burden of proof to one side or another merely avoid the issue.

In the end, the most promising route may be to abandon modes of compensation that require a legal standard of causation. That implies that the tort system may not be suited to all toxic torts, at least where negligence is not alleged. But any substitute should attempt to meet the goals of tort law. In this regard, we already have experience with some alternative mechanisms, ranging from the Black Lung program to workers' compensation.

The most promising alternative, which would supplement rather than supplant the tort system, may be an insurance mechanism—perhaps a national program of secondary catastrophic medical insurance like those now available in several states. But if such a road is taken, financing should be derived from the risk-creating elements in society that would otherwise face greater tort liability. This might be accomplished by imposing fees on risk producers, using data on comparative risk derived from quantitative risk assessment.

It is important to emphasize, however, that any such effort should be aimed at the larger social need to compensate for injuries arising out of unanticipated and involuntary exposure to risk. The piecemeal approach—one regime for CERCLA sites, another for radiation, still another for vaccine-related injury, and so forth—is unacceptable. The ultimate question is one of fairness: access to compensation for these harms should be based on need, not on factors such as one's "good fortune" in contracting an illness as part of a group that is politically compelling or momentarily notorious.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. Two minutes.

Mr. ROTH. I yield the remainder of my time to the distinguished Senator from Louisiana.

Mr. LONG. Mr. President, with the measure before us we are undertaking to finance an enormously expensive program. The expense of this program for cleaning up toxic waste over time may be thought of as somewhere between $40 and $100 billion.

Just looking at the situation in Louisiana, that estimate may very well prove to be a conservative figure. For example, there are very few toxic waste sites in Louisiana that have been put on the list because they are not in populated areas. If they used the same standards that they are using in New Jersey, where they are heavily populated, you would think that almost the entire State of Louisiana would be eligible for toxic waste aid. Louisiana has one oil well drilled for every square kilometer or roughly two wells drilled for every square mile, though they are not all successful.

The Toxic Waste Cleanup Program might well cost $200 or $300 billion, for all we know. We are just getting into it to see what it will cost us. No one knows how much it will cost.

As far as the Victim Assistance Program is concerned, it is being offered as an experimental program. But if it were to be put into effect nationwide, I believe this thing could well cost hundreds of billions of dollars. If you just think of where we have gone in other similar programs, you can get some idea of what might happen. In the Black Lung Program, we must be paying 10 times what some thought we should have been paying—for example by paying benefits on the assumption that a person died from black lung when in fact a rock dropped on his head and crushed his skull.

In the Disability Insurance Program, the cost rapidly rose to exceed the estimates about 4 to 1 when we were able to put the lid on. The cost was estimated to be eight times what the original estimate was before we managed to get the thing under some control.

It is far better to try to fund the Toxic Waste Cleanup Program as we are doing now and see what this will cost before we embark on a new Victim Assistance Program with what could be untold costs. There is no way one can estimate what the cost of this new program could be. I suggest that we fund these spending programs one at a time, and drop the Victim Assistance Program.

The PRESIDING OFFICER. Who yields time?

Mr. MITCHELL. Mr. President, I yield myself the remainder of time in behalf of the opponents of this amendment.

Mr. President, I think it is fitting that we have had these closing remarks. We have had a series of statements in which every argument in favor of Senator ROTH and his provision has not been directed at the provision but at other things. We have had estimates that have increased almost by the minute as to the potential cost and we now hear $200 billion to $300 billion, a $157 billion increase by the opponents just since yesterday. I shudder to think what the estimate of the cost would be if this debate went on for a few more hours or another day. The fact is that under this bill there will be a maximum spent of $30 million for 5 years and not 1 cent more spent, not 1 cent more.

Not 1 cent more, notwithstanding these claims.

Secondly, this is not an entitlement program, this is not a national health insurance program, this is not a black lung program. The fact is, if some of these other programs had a limited test program such as this one, perhaps they would not be experiencing the difficulties that the opponents of this provision now attribute to them. This is a cautious, limited-in-scope, limited-in-time, limited-in-funding effort to learn whether or not there is indeed a nationwide problem and, if so, how it could be dealt with in an effective, responsible manner.

Those who now say kill this provision are, in effect, saying do nothing. Those of us who want to proceed are saying, let us develop the information in a sensible way, and limited way, so that in the future, we can make a judgment based on rational information, not on speculation, hyperbole, and wild exaggeration as to what this may or may not cost.

Mr. President, I urge the Members of the Senate to look at the provisions of this bill, look at the program. Do not look at the other things that have been referred to here today.

The PRESIDING OFFICER. All time has expired.

Mr. ROTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Delaware. The yeas and nays having been ordered, the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Dakota [Mr. ANDREWS] and the Senator from North Carolina [Mr. EAST] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from New York [Mr. MOYNIHAN], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I also announce that the Senator from Montana [Mr. BAUCUS] is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Montana [Mr. BAUCUS] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 49, nays 45—as follows:

[Rollcall Vote No. 193 Leg.]

YEAS—49

Abdnor
Armstrong
Bentsen
Bingaman
Boschwitz
Cochran
Danforth
Denton
Dole
Domenici
Evans
Garn
Glenn
Goldwater
Gorton
Gramm
Grassley
Hatfield
Hawkins
Hecht
Heflin
Helms
Hollings
Johnston
Kassebaum
Kasten
Laxalt
Long
Lugar
Mattingly
McClure
McConnell
Murkowski
Nickles
Nunn
Pressler
Quayle
Roth
Rudman
Simpson
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—45

Biden
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Cranston
D'Amato
DeConcini
Dixon
Dodd
Durenberger
Eagleton
Exon
Ford
Gore
Harkin
Hart
Hatch
Heinz
Humphrey
Inouye
Kennedy
Kerry
Lautenberg
Leahy
Levin
Mathias
Matsunaga
Melcher
Metzenbaum
Mitchell
Packwood
Pell
Proxmire
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Stafford

NOT VOTING—6

Andrews
Baucus
Boren
East
Moynihan
Stennis

So the amendment (No. 674) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

Mr. MELCHER. Mr. President, I wish to announce that my colleague, Mr. BAUCUS, is not in attendance at today's session due to the death of his grandmother, Mrs. Louise Baucus.

AMENDMENT NO. 680

Mr. DOMENICI. Mr. President, on behalf of myself, Senator SIMPSON, and Senator BENTSEN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mr. SIMPSON, and Mr. BENTSEN, proposes an amendment numbered 680.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 87, after line 26, insert the following new section and renumber succeeding sections accordingly:

DE MINIMIS CONTRIBUTOR SETTLEMENT PROVISIONS

SEC. . Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 if further amended by adding the following new subsection:

"(d) The President shall consider, but may accept or reject, good-faith offers of settlement under this section or section 107 from any person potentially liable under such sections, and in the discretion of the President is authorized to accept such offers if the offer does not constitute a substantial portion of the costs of response, if—

"(1) the amount of the hazardous substances contributed to the release by the party making the offer, and

"(2) the toxic or other hazardous effects of the substances contributed to the release by the party making the offer are minimal in comparison with contributions to the release by other potentially responsible parties. For the purposes of this subsection, a good faith offer is one which is reasonable based on the objective evidence. Not later than March 1, 1986, the President shall publish guidance documents defining what would constitute de minimis contributions under this section.

On page 87, after line 26, insert the following new section and renumber succeeding sections accordingly:

MIXED FUNDING

SEC. . Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(C) The President may use monies from the Fund to pay for that portion of the response costs (or of a remedy to be performed jointly with responsible parties) which is attributable to the contribution of hazardous substances from parties who are determined by the President, on the record, to be unknown or insolvent, or similarly unavailable.".

On page 87, after line 26, insert the following new section and renumber succeeding sections accordingly:

RELEASES FROM LIABILITY

SEC. . Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(e)(1) The President may provide any person with a covenant not to sue concerning any future liability under this Act resulting from a future release or threatened release of hazardous substances addresssed by a remedial action, whether that action is onsite or offsite, if this covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act, and—

"(A) the person is full compliance with an administrative order or consent decree under this section for response to the release or threatened release of hazardous substances, and

"(B) this response action has been approved by the President.

"(2)(A) In assessing the appropriateness of a covenant not to sue, the President shall consider whether the covenant is in the public interest, taking into account whether the cleanup will be done, in whole or in significant part, by the responsible parties themselves. To the extent that private parties perform the cleanup and are in full compliance with an administrative order or consent decree approved by the President, such parties shall receive a more expansive covenant not to sue than if the cleanup were performed entirely by the Government. However, this section is not intended to limit the President's discretion in settling with de minimis contributors under subsection (d) of this section.

"(B) Factors to be taken into account in the President's consideration of the public interest under this subsection include, but are not limited to, the following:

"(i) the effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility:

"(ii) the nature of the risks remaining at the facility after completion of the remedy;

"(iii) the extent to which performance standards are included in the order of decree;

"(iv) the extent to which the response action provides a complete remedy for the facility, including the elimination of the hazardous nature of the substances at the facility; and

"(v) whether the Fund or other sources of funding, including other responsible parties, would be available for any additional response actions that may become necessary for the facility.

"(3) In the case of remedial actions undertaken jointly by the President and responsible parties, any governmental entity taking part in such remedial action shall be subject to future liability as a private responsible party. Any future response actions arising at the same facility, and which give rise to further liability, shall obligate the Fund to the extent of the obligation of the President under the earlier remedial action responsibility. The President's contribution to such future response actions may be made through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

"(4) The President is authorized to include any provision allowing future enforcement action under this section or section 107 that in the discretion of the President is necessary and appropriate to assure protection of public health, welfare, and the environment.

"(5) In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

"(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

"(B) which involves the treatment of hazardous substances so as to destroy, eliminate or permanently immobilize the hazardous constituents of such substances, such that in the judgment of the President the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability under this Act for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable under section 106 or 107 with respect to such release or threatened release at any future time. The President is authorized to include in such covenant not to sue a provision allowing future enforcement action under this section or section 107, in the case of any fraud or misrepresentation by such person.

"(6) Any covenant not to sue provided by the President under this subsection shall be effective only when approved by a Federal District Court, upon the application of the President, after consideration of the conditions and factors specified in this subsection.".

On page 84, after line 14, insert the following new section and renumber succeeding subsections accordingly:

EXPEDITED REMEDIAL ACTION AGREEMENT PROCEDURES

SEC. . Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"( )(1) The President may enter into agreements pursuant to this subsection for the purpose of expediting remedial action with respect to a release or threatened release of a hazardous substance, in cases involving more than one potentially responsible party. As a matter of public policy, the President shall act to facilitate agreements under this Act, in order to protect human health and the environment by facilitating remedial action and to minimize litigation under this Act.

"(2)(A) At a date not later than that of the completion of the Remedial Investigation and Feasibility Study, the President shall provide all persons who are potentially responsible for a release or a threatened release:

"(i) the identity of any other potentially responsible parties who have been identified and served with notice of potential liability;

"(ii) a Nonbinding Preliminary Allocation of Responsibility among all identifiable potentially responsible persons at a facility, including those parties which may be unknown, insolvent, or similarly unavailable. The allocation shall be based on the President's estimated and ranking of the volumetric contributions by such potentially responsible persons, and such additional factors, including, but not limited to, toxicity and mobility of the identified hazardous substances, as in the discretion of the President may be relevant to the preparation of such allocation;

"(iii) public information regarding successful agreements involving other facilities, as compiled beginning no later than January 1, 1987, and updated on a quarterly basis thereafter; and

"(iv) any other technical or scientific information, not otherwise privileged or attorney work product, which the President will untilize in determining whether to accept or reject an agreement offer under this section.

"(B) The information required by this paragraph (other than subparagraph (A)(ii)) shall be available in advance of such notice upon the request of a potentially responsible person in accordance with procedures established by the President.

"(C) The provision of subsection (e) of this section regarding protection of confidential information shall apply to information subject to distribution under this paragraph.

"(3)(A) The procedures of this subsection shall apply to each case of remedial action with respect to a release or threatened release of a hazardous substance involving more than one potentially responsibly party, unless in the discretion of the President use of these procedures is inappropriate because:

"(i) sufficient information to effectively use these procedures is not available;

"(ii) there is an urgent need for response and enforcement action that could not be met if these procedures were used;

"(iii) the number of responsible parties who are not de minimis is so small that use of the procedures would not expedite settlement; or

"(iv) an equitable settlement could be more expeditiously or effectively achieved through other settlement or other alternative dispute resolution procedures.

"(B) If the President declines under this paragraph to use the procedures set forth in this subsection, the President shall notify potentially responsible parties at the facility of such decision and the reasons why use of such procedures is inappropriate.

"(4) The President may not commence a remedial action under this section or take any action under section 106 until 180 days (or 90 days where the facility involves 9 or fewer potentially responsible parties) after providing notice of an intent to engage in the procedures under this subsection. Advance disclosure of information upon the request of a potentially responsible party under paragraph (2)(B) shall not commence the 180-day period (or 90 days where the facility involves 9 or fewer potentially responsible parties).

"(B) Nothing in this subsection shall limit the President's authority to undertake response action regarding a significant threat to public health or the environment within the negotiation period. The President may also commence any additional studies or investigations authorized under subsection (b) of this section, including remedial design, during the negotiation period.

"(5) To collect information necessary or appropriate for performing the allocation under paragraph (2)(A) of this subsection, the President may be subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

"(6) The persons with who the President reaches agreement under this subsection shall undertake or finance the remedial action and all previous costs of response, including operation and maintenance, or a discrete part of such remedial action, as provided by the agreement.

"(7)(A) The persons receiving notice under paragraph (2) of this subsection shall have 90 days (or 45 days in cases involving 9 or fewer potentially responsible parties) to make a proposal to the President for undertaking or financing the remedial action. In extraordinary cases, the President may grant a thirty-day extension of such period.

"(B) Where potentially responsible parties offer to provide payment or the undertaking of remedial action exceeding 50 per centum of the total shares as estimated by the President in the Nonbinding Preliminary Allocation of Responsibility, and such offer provides for response or costs of response for an amount equal to or greater than the cumulative total, under the Nonbinding Preliminary Allocation of Responsibility, of the potentially responsible persons making the offer, such an offer will be considered to be in "good faith" and the Federal district court in the district in which the facility is located may order the President to accept the offer.

"(C) The President's decision to reject an offer shall not be subject to judicial review, unless such offer is considered good faith under this paragraph. Where the President rejects an offer meeting such criteria, such rejection shall be in writing and shall be reviewable in the Federal district court in the district in which the facility is located. In such cases the President shall have the burden of persuasion to establish that the rejection was not unreasonable, in light of additional information received after the completion of the Nonbinding Preliminary Allocation of Responsibility. The record for such appeal shall consist of the written notice of rejection, the documents and evidence referred to therein, all comments and evidence submitted by others in response to the written notice of rejection, the President's rationale for rejection, as well as any information of which the court may take judicial notice.

"(D) Judicial review under this subsection shall be limited to the President's decision to reject the good-faith offer and shall not include any other issues relating to the selection or scope of the remedy, the computation of costs associated with response action, or the Nonbinding Preliminary Allocation of Responsibility. Remedial actions shall not be delayed solely because of such review.

"(E) Where the President's decision to reject a good faith offer under this paragraph is found to be unreasonable, the Fund shall be liable to the potentially responsible persons who brought suit, for any legal fees and other reasonable costs incurred during such judicial review.

"(F) Where the good faith offer of potentially responsible parties would include the entire share of cleanup allocated to all potentially responsible parties under the Nonbinding Preliminary Allocation of Responsibility (other than the shares allocated to unknown, insolvent or similarly unavailable parties under section 106), such offer, if accepted, shall be granted a "bonus" from the Fund representing 10 per centum of the cost of response action. Such bonus shall not be available in the case of facilities where there are three or fewer potentially responsible parties.

"(8) If, as part of any agreement, the President will be carrying out remedial action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such funds for purposes of carrying out the agreement.

"(9) If an additional responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(10) The costs incurred by the President in producing the Nonbinding Preliminary Allocation of Responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President under this section. Where an offer under this section is not accepted, such costs shall be considered costs of response.

"(11) The Nonbinding Preliminary Allocation of Responsibility shall not be admissible as evidence in any proceeding under sectin 106 or 107 of this Act, and no court shall have jurisdiction to review the Nonbinding Preliminary Allocation of Responsibility in any action under section 106 or 107. The Nonbinding Preliminary Allocation of Responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

"(12)(A) If a good-faith proposal for undertaking or financing a remedial action has not been submitted within 90 days (or days in cases involving 9 or fewer potentially responsible parties) of the provision of notice pursuant to this subsection, the President may thereafter commence a remedial action under this section or take an action against any person under section 106 of this Act.

"(B) If an agreement has been entered into under this subsection, the President may take any action under section 106 against any person who is not a party to the agreement, once the 90-day period (or 45 days in cases involving 9 or fewer potentially responsible parties) for submitting a proposal has expired.

"(13) Whenever the President has entered into an agreement for remedial action under this subsection, the liability under this Act of each party to the agreement, including any future liability arising from the release or threatened release that is the subject of the agreement, shall be limited as provided in the agreement.

"(14) Nothing in this subsection shall be construed to affect:

"(A) the liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement; or

"(B) the authority of the President to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

"(15) The liability of any party to an agreement under this subsection for contribution shall be limited as provided in section 107(1)(3).

"(16) Whenever the President enters into an agreement under this subsection, the agreement, following approval by the Attorney General, shall be entered as a consent decree under section 106 of this Act. Any party failing to comply with an agreement shall be liable for a penalty not to exceed $25,000 for each day during which such failure continues.".

On page 101, after line 22, insert the following new section and renumber succeeding sections accordingly:

STATE MATCHING GRANTS

Sec. . Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(o)(1) Notwithstanding any other provision of this section, the President is authorized to provide up to $1 million per year to each State, out of the Fund, to be matched by an equivalent expenditure by such State, up to a cumulative national total from the Fund of $50 million per year, for State-administered and designed programs for the cleanup and stabilization of facilities contaminated by releases of hazardous substances.

"(2) The following conditions shall be attached to monies provided by the Fund as State Matching Grants:

"(A) no monies may be expended for any liti[illegible]ted expenses;

"(B) there shall be no liability of the Fund or the United States (including third party claims of any type) arising from such response action;

"(C) monies expended under this subsection may be used at any facility, as determined by the State, in consultation with the President, to be appropriate; and

"(D) facilities selected for cleanup with such monies shall be facilities for which there is no reasonable likelihood of recovery of costs under existing authority.

"(3) In determining whether a substance is a hazardous substance, pollutant or contaminant for purposes of this subsection, the exclusion of petroleum under the last sentences of sections 101(14) and 104(a)(2) shall not apply.".

(Mr. COCHRAN assumed the chair.)

Mr. DOMENICI. Mr. President, first I wish to thank the managers of the bill for accepting this amendment. In particular, I wish to thank Senator SIMPSON, my prime cosponsor, for all of the time and hours he and his staff have spent with me and my staff in putting this amendment together. I also wish to particularly thank Senator BENTSEN for his help.

Mr. President, this is an amendment that has four major components, and then a small State matching grant program of $1 million for sites that are not presently covered. But the principal thrust of this amendment has to do with the growing concern that some of us have that, while we keep talking about cleaning up the sites, the pace is about as slow as any cleanup process we have ever been involved in.

Under Superfund, only six sites have been fully cleaned up of the 850 on the National Priority List. Some estimates claim that only 16 percent of the Superfund dollars are going to physical cleanup while more than half is going to administration and nonpriority sites. At some sites, transaction costs, that is lawyers' fees and technical studies for litigation, are literally approaching or exceeding the cleanup costs.

There is a case in point in Kansas City where the estimated remedy cost is $10.5 to $12.5 million, while the litigation cost is estimated at $2.5 to $3 million and the private party litigation cost as high as $30 million. Clearly, we are going to have situations where litigation is going to be the only approach and where they are just going to have to fight it out.

However, everyone should know that this litigation has also put the companies that are liable, both retroactively and in the future, in a situation where the insurance industry is starting to decide many private parties should not even be covered any longer. There is even a notion that many of these companies in the future will not be able to buy liability insurance. The liability standard under the act may be essential deterrent for unreasonable companies that absolutely do not choose to be reasonable partners in this cleanup. But I can assure you it also acts as a very major deterrent to voluntary cleanup.

So what we have tried to do in this amendment is to refocus the intent of the program back on cleaning up the sites and away from the slow and costly litigation. Senator SIMPSON and I explored a number of possible alternatives to try to turn this program around. What we are offering is a modest proposal to try to encourage responsible parties to come to the table and settle with EPA and get on with the business of cleaning up the sites.

Briefly, the amendment which we offer, which is adding on to EPA's settlement policy—and, incidentally, is supported by the Administrator of EPA in its final form—would do the following: on orphan shares, it provides congressional approval to an existing policy to have the fund pay for cleanup of shares contributed by unknown, insolvent, or unavailable parties.

Second, it encourages what we call de minimis settlement offers. By that we mean it encourages the Government to settle with small contributors without full-blown litigation.

Third, it provides some possibility for releasing some parties from liability once they have done everything that can be done and have paid for the cleanup as provided in this amendment and done what is required of them.

In essence, it provides releases from future liability to parties working with EPA who perform environmentally preferable cleanups on their own.

Fourth, it expedites remedial action through settlements by requiring EPA, with some limited specific exceptions, to issue nonbinding prelminary allocations of responsibility. This allocation would provide a basis on which the parties could work with the Government to share information and move rapidly toward reasonable settlement offers.

Finally, outside the area of settlement, as I indicated in my opening remarks, the amendment would provide $1 million per State in matching grants for cleanup of small sites not covered under the Superfund.

As I have already indicated, development of these amendments has been a very difficult job and a lot of people have been involved—my staff, Senator SIMPSON's staff, Senator BENTSEN's staff, and clearly those who are on the majority and minority staff of the committee have helped us with the language.

I am grateful to all of them, and most of all I am grateful to the floor managers who have indicated their willingness to accept this amendment. My conclusion is that we must do something to expedite the primary purpose of this Superfund which is to get these sites cleaned up.

I am convinced that without something like this as I have described it—which lends some strong impetus to settlements out of court, identifying liability in a preliminary allocation among those that are liable, taking care of orphan shares and de minimis contributors—there is a real chance, if it works as we plan it, that many of these sites will be cleaned up because responsible parties will gather around the table and settle the amounts that are owed in a reasonable manner, far more reasonably than what is going to occur in the drawn-out litigation that is presently before the courts on many of these cases.

I yield the floor at this point.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, let me say that the work of Senator DOMENICI, Senator SIMPSON, and their staff has been very productive. And I am most appreciative of it. Their cooperation has been shown in trying to develop a compromise to see if we could not settle more of these waste site clean ups instead of having to go through litigation. This package of amendments attempts to provide the President with a set of tools that may be used to facilitate the cleanup of hazardous waste sites through private party remedial actions that are protective of the human health and the environment. It offers the opportunity to achieve these results through negotiation rather than through litigation. It offers the opportunity to use Superfund for site cleanup rather than for lawsuits.

One of these amendments reiterates the authority of the President to use Superfund to pay for the portion of a remedy that represents the contribution from parties who just are not available or who are bankrupt, or who cannot be found. I think that ability would encourage the other parties to settle rather than for them to have to pay for something to which they made no contribution, and want no part of.

Another amendment provides small contributors with the opportunity to settle their portion of a site separately. While such settlements are at the discretion of the President, minimal contributors can make good faith offers that would allow them to pay their appropriate share of the remedy and then they would be removed from the litigation. Removing these small contributors allows them to pay a fair share, but it reduces the ability of other—major—responsible parties from dragging these small contributors into the process and through the lengthy litigation in which, in many cases, the lawyers' fees could exceed the amount of responsibility.

A third amendment provides the President with the authority to release parties from future liability under limited conditions. Mandatory release is provided in two limited circumstances. The first situtation arises when the President requires waste to be relocated to an off-site facility in compliance with all the appropriate solid waste disposal regulations instead of using an alternative onsite remedial action. The second situation arises when, in the judgement of the President, a remedy essentially destroys the current or foreseeable future risk of the site or negates the future risk of that site. These are limited situations well within the control of the President. But this provision with the others can facilitate private-party action.

Mr. President, Senator DOMENICI, Senator SIMPSON, the chairman, myself, and several others and their staffs have worked long and hard. I think what we are proposing here is a reasonable, practical solution to these problems.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I am most appreciative of the remarks of the distinguished Senator from Texas. Obviously, he has shared the same concerns that some of us had as we went through the hearings and markup on the bill. We do not solve all of the issues and delays—that never happens in issues as complicated and profound as this. Clearly we hope that you are correct in your assessment that will have an expeditious and healthy effect on cleaning up which is the primary goal of superfund. That is what we want to happen.

I thank you for your comments.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, it has been a distinct privilege to work with Senator DOMENICI on this issue, and with Senator BENTSEN and Senator STAFFORD. The impetus and the credit goes to Senator PETE DOMENICI for his dogged pursuit of correcting something which looked to us like a form of eternal life. That was litigating and litigating and litigating in the Superfund. Hopefully, we have now brought to mortal conclusion litigating to that extent. That is what we are up to. It should speed the process. It should reduce transaction costs, and attorneys' fees. The issue of Superfund has never changed. It is, clean up waste sites and make those who did it pay for it. That is what we are trying to do. We get diverted occasionally. But I want to thank the chairman of the committee for his patience and good humor which are both inexhaustible. He has been more than helpful, and, as I say, Senator DOMENICI and particularly Senator BENTSEN—who is the ranking member of the committee on which I serve and on which Senator DOMENICI serves and which has always been a place of good cooperation and honest discussion. It was proven so again here today.

So what pleases me most is that we bring Superfund back into the real world, by promoting settlements. Let us urge companies to settle. That does not mean everything is a sweetheart deal and everybody putting together a slick operation. There are people who try to do the right thing in the real world. Yet, we seem to legislate in order to nail those who do not want to comply with CERCLA. In the process, we hit a lot of goods guys caught in the moving target.

There is some reason to question the way the whole program is operating, and Senator DOMENICI and I considered a number of possible avenues of reform. After working with the administration, and consulting with all sides in this situation, we decided to offer a package of reforms that address the following issues:

First, orphan shares: Our amendments provide congressional approval of the Administrator's existing discretion to have the fund pay for the cleanup of the shares contributed by unknown, insolvement or similarly unavailable parties, such as various government entities which may be immune from liability.

Second, de minimis settlement provisions: To encourage the Government to settle with small contributors without resorting to full-blown litigation.

Third, releases from liability: Where parties, working with the EPA, perform environmentally preferable cleanups on their own, they will become eligible for releases from future liability that will provide greater certainty and insurability.

Fourth, expedited remedial action agreement procedures: The Government will henceforth provide, with specified exceptions, a nonbinding preliminary allocation of responsibility. This allocation would provide a basis on which parties could work with the Government to share information and move more rapidly toward reasonable settlement offers.

Fifth, State matching grants: We have also proposed a State matching grant for innovative, State-run cleanup efforts that are important, but generally too small to trigger a Superfund response. The program would allow the fund to provide $1 million per State, in matching grants, but none of this money could be used in litigation expenses. It is hoped that, in addition to spurring State cleanup efforts, that this program will provide innovative ideas for the national Superfund. In addition, this money will be available for cleaning up leaking underground storage tanks.

I believe that the Domenici-Simpson package of amendments is just the beginning. It seems likely, if not certain, that problems with cleanup actions will continue to be documented—problems with insurance and liability will continue to simmer—until at last these conditions will come together and rise, boiling to the surface like a volcano. Maybe then Congress can really improve the Superfund Program.

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. Mr. President, as chairman of the committee, I simply want to express my appreciation to the personal staff for the three Senators who have been so deeply involved in working out this compromise—Senators BENTSEN, DOMENICI, and SIMPSON—and the staff of the committee who have worked with them on both sides of the aisle to bring about this compromise which we can all accept.

It appears to this Senator that when men of good will and reasonableness get together, solutions to these problems, so far as human minds can devise them, can be reached. So I offer great thanks to Senator BENTSEN, Senator SIMPSON, and Senator DOMENICI.

Mr. DOMENICI. Mr. President, I rise to offer a package of amendments on behalf of myself, Senator SIMPSON and Senator BENTSEN. These amendments are intended to address what we consider to be the fundamental flaw with the Superfund law—the heavy reliance on Government cleanup and litigation, rather than private party cleanup following settlement. Without more voluntary private party cleanup, we simply cannot expect to address all of the hazardous waste sites that have been identified or will be identified in the future—and the public health will not be protected to the highest degree.

In the past 5 years, the Environmental Protection Agency [EPA], has placed or proposed 850 hazardous waste sites on the National Priority List [NPL]. EPA estimates that ultimately 2,000 out of a possible 20,000 sites will be on the NPL. However, other agencies, such as the Congressional Office of Technology Assessment, estimate that as many as 10,000 toxic waste sites will require Federal cleanup. Even though EPA has initiated 422 emergency removal actions, only 6 sites have been fully cleaned up. The National Campaign Against Toxic Hazards, a citizens' group that studied EPA's record, reports that only 16 percent of the funds have been spent on actual physical cleanup. Less than one dollar out of five in the $1.6 billion of Superfund has been used to clean up toxic waste sites—and more than half of the fund has been spent on "administration and nonpriority sites."

This slow pace is the direct and inevitable result of the reliance given by EPA on litigation as the principal tool for cleanup. EPA is forgoing the more expeditious and cost efficient options of voluntary cleanup and negotiated settlements, and instead is relying on the most cumbersome piece of regulatory machinery available: the Federal court system.

This litigation driven policy is not only adding years to cleanup as cases crawl through the Federal courts, but is also incurring staggering transaction costs.

An exhaustive and independent study on the transaction costs conducted by Putnam, Hayes & Bartlett, Inc., a reputable economic and management consultant which has often advised EPA, estimates that the total litigation costs for 1,800 NPL sites would range from $3.5 to $6.4 billion, a figure corrsponding to 25 percent to 44 percent of Superfund funds for cleanup. EPA's own record proves the fact that the Government's strategy conflicts with society's objective to remove hazards promptly at the least cost.

The Conservation Chemical Co. case in Kansas City is a prominent example of excessive litigation. EPA estimates an expected cost of remedy between $10.5 million and $12.5 million. Government litigation costs could be between $2.5 and $3 million while the private party litigation costs could be as high as $30 million.

Along with the need for expeditious cleanup is the concern for fairness. In 1980, it was hoped that an expansive liability standard, combined with retroactive liability, would encourage waste generators to remedy hazards created in the past, as well as discourage them from creating new hazards. Certainly the Government could not have wielded a more powerful or extraordinary legal tool. Nonetheless, experience has shown that the use of this extraordinary legal standard has seriously impeded expedited voluntary cleanup. Private parties, including small contributors, could face liability for an entire cleanup, including that portion related to lawful disposition before Superfund became law. Who can blame parties for fighting under these conditions—especially when, if they do clean up to the highest standards EPA can imagine, they could still face full liability if a site fails in the indefinite future. While such extraordinary legal tools are necessary to deter future mishandling of wastes, by definition they cannot deter what was done in the past—and that is what Superfund is to do: correct past errors in order to protect the public health and environment.

The only comparison I can think of in providing guidance here is from Charles Dickens' classic "Bleak House," where he excoriates a society in which lawyers have run rampant. As he described a case spanning several lifetimes, Jarndyce versus Jarndyce, he explained the problem:

> And thus, through years and years, and lives and lives, everthing (in the lawsuit) goes on, constantly beginning over and over again, and nothing ever ends. And we can't get out of the suit on any terms, for we are made parties to it, and must be parties to it, whether we like or not.

The Superfund problem is protracted litigation.

Increasing overall funding levels alone will not improve the pace of cleanup. Concerns about public health will remain while litigation lumbers along—sometimes for years. We need to proceed with rapid cleanup through fair settlements, and put outrageous transaction costs into more productive use, thereby removing any threat to human health and the environment promptly. We must amend the law to restore it to its overarching goal: to clean up hazardous waste sites. In order to do this, we must provide incentives for the Government and private parties to join together rather than litigate.

Our amendments are designed to provide the framework for a rational settlement policy which will encourage voluntary cleanup. They leave intact the current enforcement tools which EPA wishes to keep, but they provide a window for settlement. We include incentives for private parties to assume responsibility for cleanup: the possibility of avoiding substantial litigation expenses, contribution protection, and the possibility of releases from future liability. I believe a detailed description of each amendment is appropriate.

(1) MIXED FUNDING

A problem arises when potentially responsible parties are unknown, insolvent or similarly unavailable. Similarly unavailable parties would include Government entities that are immune or exempt from liability under this act. In such situations, there are orphan shares, and the question arises as to who should pay for their cleanup. As an incentive to settlement, this amendment would restate and reinforce the President's existing authority to utilize the Fund to pay for such shares.

There is no suggestion that the President currently lacks authority to pick up orphan shares. However, to the extent that existing policy limits their assumption by the Fund, the amendment is intended to provide explicit congressional support for additional flexibility.

(2) DE MINIMIS CONTRIBUTOR SETTLEMENT PROVISIONS

This amendment is designed to encourage settlements with small contributors—including parties which may have contributed a relatively large volume of low-toxicity waste. It is intended that such parties be afforded an opportunity to make reasonable offers to the President, which the President shall consider, to "cash out" or otherwise achieve settlement without resorting to litigation. However, it is expected that the President will exercise his discretion based on objective, rather than subjective criteria. This is intended to provide for a higher degree of predictability and protection of the environment than is presently the case.

Nothing in this section should be construed as limiting the discretion of the President in dealing with cases in which the volume of a hazardous substance attributable to a party is relatively small, but the toxicity of the hazardous substance is extremely high—as may be the case with dioxin, for example. The guidance documents which the President is to produce by March 1, 1986, are to define de minimis contributions clearly to Government enforcement officials across the country, in order to make enforcement patterns more predictable. Additionally, potentially responsible parties will be able to refer to such documents so that they can reasonably ascertain the likely Government position in specific de minimis contributor situations in which they may be involved.

(3) RELEASE FROM LIABILITY

One of the keys to settlement in Superfund cases, perhaps to an even greater extent than in other cases, is the possibility of a meaningful release from future liability. This amendment would confirm and clarify the authority of the President to grant releases from future liability in certain circumstances where responsible parties agree to conduct cleanup actions under a settlement agreement.

Mandatory releases are to be granted in two situations. The first occurs when the President requires a potentially responsible party to move hazardous materials offsite to a nonleaking RCRA facility with a final permit, despite the fact that the potentially responsible party had offered an onsite remedy consistent with the National Contingency Plan—where the initial offer included both onsite and offsite components, the rejection of the onsite component alone could still leave the potentially responsible parties eligible for a release under this section. In the second situation, where a party has offered, and the President accepted, a complete destruction remedy such as high level incineration, which meets the President's requirements under this section, the President shall grant a release. It is important to emphasize that the standards on which the President judges the effectiveness of a technology under this section are based on his best current judgment, rather than his judgment in the future. Finally, the releases under this subsection may be reopened in cases of fraud or misrepresentation. In both general situations, the covenant not to sue will include any future liability from releases or threatened releases at the new facility, either the RCRA facility specified by the administrator or the onsite facility.

In all other cases, the President has authority to grant releases based on the principle, "the better the remedy, the better the release." The President is to make decisions as to the appropriateness of releases in specific cases based on the public interest, taking into account the degree to which private parties perform a cleanup themselves, as well as other factors, including, but not limited to: the effectiveness and reliability of the remedy; the nature of the risks remaining at the facility after the completion of the remedy; the extent to which performance standards are included; the extent to which the remedy may be adjudged complete, and whether other sources of funding, including other responsible parties, will be available for additional response actions that may become necessary for the facility. It is intended that the administrator utilize these criteria in a balanced manner. In using the criterion concerning future funding, the potential that Superfund may be a temporary program should not be taken into account, because in such an event the Congress would clearly assume the obligation through another mechanism.

(4) EXPEDITED REMEDIAL ACTION CLEANUP AGREEMENT PROCEDURES

The goal of CERCLA is to achieve effective and expedited cleanup of as many uncontrolled hazardous waste facilities as possible. One important component of the realistic strategy must be the encouragement of voluntary cleanup actions or funding without having the President relying on the panoply of administrative and judicial tools available.

Under this section, the President would be authorized to enter into agreements with potentially reponsible parties to conduct remedial actions. The parties to such agreements would be obligated to perform remedial action or pay the costs of remedial action as provided in the agreement. In turn, these parties would not be subject to subsequent suits for contribution by persons who are not parties to the agreement. Further, persons who are not parties to the agreement would remain liable, to the full extent of existing law, in a section 107 action to recoup fund expenditures or in a section 106 action for injunctive relief. In addition, persons who are not parties to the agreement would not be guaranteed the same level of release from liabilty that could be obtained by parties to the agreement.

This section states that, as a matter of public policy, the President shall act to facilitate settlement agreements in order to protect human health and the environment through rapid remedial action and minimization of the delay and cost of litigation. The President shall utilize a set of procedures, including the development of a Nonbinding Preliminary Allocation of Responsibility, to the greatest possible extent as a matter of course. Where one of a series of specified exceptions is found, and on the basis of objective evidence the President does not utilize the procedures in this section, he is to provide written justification for the exception.

Under this section, there will be a 180-day negotiation period—90 days in cases involving nine or fewer potentially responsible parties—following notice to parties at the time of the completion of the Remedial Investigation and Feasibility Study. Such notice would include a Nonbinding Preliminary Allocation of Responsibility, in which the President would provide information concerning the relative contributions of various parties to the site—including shares attributable to unknown, insolvent or similarly unavailable parties. For a period of 90 days—45 days in cases involving nine or fewer potentially responsible parties—the potentially responsible parties would be permitted to negotiate and to present the President with an offer of settlement, which would include a proposal for undertaking or financing the cleanup. In turn, the President would then have 90 days—45 days in cases involving nine or fewer potentially responsible parties—to accept or reject the offer and to make determinations of the amount of fund moneys that would be made available. In extraordinary circumstances, the time periods could be extended, for example because of the large number of parties involved, although such extensions are intended to be employed very rarely.

The President's decision to reject such agreements would not generally be reviewable in court. The Nonbinding Preliminary Allocation of Responsibility is not reviewable or admissible as evidence in future enforcement proceedings, on any issue, including the issue of appointment. However, where the President rejects a good-faith offer in which parties would pay for or undertake cleanup of more than 50 percent at the facility—the percentage being determined from the Nonbinding Preliminary Allocation of Responsibility, his decision is reviewable, provided that the cumulative total included in the parties' offer also equals or exceeds their cumulative total under the Nonbinding Preliminary Allocation of Responsibility. In such cases, the President will have the burden of persuasion to demonstrate to the court that the decision to reject the offer was not unreasonable in light of new information received after the completion of the Nonbinding Preliminary Allocation of Responsibility. However, the scope or choice of remedy will not be reviewable under this section, and the implementation of remedial action will not be delayed.

Where the potentially responsible parties fail to make a good-faith proposal within 90 days—or 45 days in cases involving 9 or fewer potentially responsible parties—or cannot reach an agreement within 180 days—or 90 days in cases involving 9 or fewer potentially responsible parties—the President is free to undertake the response action or to initiate an enforcement action.

In order to ensure that both the President and potentially responsible parties have access to information needed to make the settlement process work properly, this section provides for information-gathering capacity in several ways. The President is to provide nonprivileged technical and scientific data related to facilities. On the other hand, the President is granted subpoena powers like those in the Toxic Substance Control Act to help him to gather required information.

To ensure that all those who wish to become parties to the agreement have an opportunity to do so, the new section provides that if a party is identified during the negotiation period or after the 180-day period—or 90 days in cases involving 9 or fewer potentially responsible parties—the party may join in the agreement or may enter into a separate agreement. Finally, the provision contemplates that all agreements entered into under this subsection would be memorialized in judicially enforceable consent decrees and that parties violating the agreements would be subject to a penalty not to exceed $25,000 for each day of violation.

Mr. BENTSEN. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 680) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 681

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 681.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 110, line 2, after "such activity," insert "unless the Administrator has entered into a memorandum of understanding with the head of such department, agency or instrumentality,".

Mr. STEVENS. Mr. President, I am offering this amendment to clarify the relationship between Federal agencies in cleaning up hazardous waste at Federal facilities. The Environmental Protection Agency has the leading role in most cleanups carried out under the Comprehensive Environmental Response, Compensation, and Liability Act. However, by Executive order, the President delegated authority to the Department of Defense to carry out certain parts of the Superfund Program which relate to that Department. EPA and DOD entered a memorandum of understanding in 1983 which defines the part played by each in implementing CERCLA. The amendment I have introduced preserves that relationship—with the expectation that it will be continued—and encourages EPA to enter similar agreements with other agencies.

The Defense Appropriations Subcommittee has—since fiscal year 1984—appropriated funds for the Defense Environmental Restoration Program. This program extends beyond the scope of Superfund and adds to the cleanup responsibilities of the Department of Defense. Under it DOD is cleaning up hazardous waste and debris left at former military sites, as well as addressing waste problems at current military facilities. Because of its slightly broader scope, the focus of DOD's program is a little different from EPA's Superfund Program. EPA emphasizes emergency removal actions and remedial actions at National Priority List sites, while DOD's program addresses the waste and debris the military has left at both its former and currently active installations. My amendment is intended to prevent conflict between the slightly different focuses of the two agencies.

EPA does play an important part in the cleanup process. The agency provides essential technical and advisory assistance to the Department of Defense. It is important to preserve that role for EPA. However, it is equally important to assure that agency cleanup programs which are efficient and effective are able to continue without disruption. My amendment allows EPA to further this goal—streamlining the approval process for cleanups—by entering a memorandum of understanding with other agencies. For the Department of Defense, which has already entered such an agreement, this amendment allows a program which has proved itself effective to continue its mission without delay.

Mr. President, this amendment preserves the current agreement between the Environmental Protection Agency and other agencies which allow the other agencies to conduct hazardous waste cleanups without direct concurrence of the EPA. The Defense Appropriations Subcommittee started a massive program of cleaning up military reservations and former military reservations. In recognition of the availability of those funds, the Department of Defense worked out with the EPA a memorandum of agreement concerning the role of EPA regarding those projects.

We held an oversight hearing this year to demonstrate that this has been one of the best programs the Department of Defense has been involved in. It has received acclaim, I think, of all portions of our society, and it has led the administration to request an increase of the moneys available to carry out this hazardous Waste Cleanup Program.

Let me emphasize that there are many areas that were former military bases that have hazardous wastes such as PCB's and other types of waste that do require the use of Federal money to secure those places so that they can be used by the civilian community without any hazard.

I offer this amendment in recognition of the need for cooperation between these agencies that the hazardous waste cleanups on military bases and former military bases can be completed with a minimum of delay and a maximum of efficiency.

There is, as I said, such a memorandum of understanding in effect right now.

I think this amendment will encourage EPA to renew that memorandum of understanding with the Department of Defense and other agencies. After all, this is making available to the environmental protection program funds that are appropriated for defense to carry out the same goals. As long as there is this working relationship, we should preserve it.

I want to thank the staffs of both the majority and the minority of the Public Works Committee and the distinguished chairman and ranking member of that committee for the understanding of those of us who are involved in administering the funds or overseeing the funds made available to the Department of Defense for this purpose. I believe this speaks for the entire set of goals articulated by the Senator from Vermont.

Mr. STAFFORD. Mr. President, we had the opportunity to examine the amendment and we believe it to be meritorious and will resolve some of the problems that we have been facing in this particular matter.

Mr. BENTSEN. Mr. President, on behalf of the minority, we have had an opportunity to examine the amendment of the distinguished Senator from Alaska. We thank him for his contribution. It is helpful and we are glad to support it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 681) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, at this point in time, our scorecard indicates there may be two amendments to be offered by Senator SYMMS, one by Senator SPECTER, and one by Senator WILSON. We know of no other amendments of title 1 of the bill. If there are some which have not been brought forward, the managers of the bill would appreciate knowing that fact. We would urge the Senators in connection with the amendments referred to to please come to the floor.

Mr. CHAFEE. Mr. President, I would appreciate some clarification from my colleagues from Wyoming and New Mexico on their amendment entitled "Releases from Liability." As I understand the amendment, it relates only to future liabilities under this act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and does not affect the authorities and responsibilities under, for example, the Solid Waste Disposal Act. Is that correct?

Mr. SIMPSON. My colleague from Rhode Island is correct.

Mr. DOMENICI. The Senator has correctly stated the scope of this amendment.

Mr. CHAFEE. The reference to cases which involve the transport of hazardous substances to a facility meeting the requirements of the Solid Waste Disposal Act raises two important issues. First, the President's rejection of a proposed onsite remedial action would not trigger this provision unless such proposed action was consistent with the National Contingency Plan. Is that correct?

Mr. SIMPSON. Yes; the amendment explicitly requires that the rejected proposed action be consistent with the National Contingency Plan.

Mr. DOMENICI. I agree with the Senator from Wyoming.

Mr. CHAFEE. The second issue raised by the reference to cases involving the transport of hazardous substances to RCRA facilities is the effect and implications of this amendment vis a vis the RCRA program. This amendment is not a generic state of the art defense to liabilities that may attach to generation and disposal of hazardous wastes. It addresses the unique situation that is created by Superfund. The justification for the amendment is that in the Superfund cases referred to in this amendment, there is the active intervention of the Government in the case of necessary redisposal of wastes and hazardous substances. As outlined in the amendment, but for the Government's intervention, the risks attendant to such redisposal would not have arisen. Wholly apart from the problems being addressed by Superfund and this amendment, the Senators are not suggesting that mere compliance with RCRA is the basis for extinguishing liabilities that attach to the generation and disposal of hazardous waste, are they?

Mr. SIMPSON. The Senator is correct. This amendment addresses the specific situation where the Government has, pursuant to Superfund, ordered under certain, specified circumstances that hazardous substances removed from a Superfund site be delivered to a RCRA facility.

Mr. DOMENICI. My colleague from Rhode Island has correctly stated the rationale of this amendment. The creation and handling of wastes under RCRA is a separate issue. We have recently learned that land disposal of certain wastes may not provide long-term protection of human health and the environment. Under existing law, if a generator of such wastes chooses to send his waste to a land disposal facility, even one that is in compliance with RCRA, he will remain responsible for such wastes. If, however, the President orders him under Superfund to take waste that has been removed from a Superfund site to an off-site RCRA land disposal facility after the generator has proposed an on-site remedial action, consistent with the national contingency plan, which the President has rejected, such generator shall not be held responsible for the future consequences of such redisposal.

Mr. CHAFEE. I thank the Senators for their explanation and clarification.

Mr. DOMENICI. While the Senator from Wyoming and I might differ from the Senator from Rhode Island over the policy implications of some aspects of existing law in this area, we do not differ on the interpretation of existing law or this specific amendment.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FINANCIAL RESPONSIBILITY REQUIREMENTS AND THE PROBLEM OF MEANINGFUL INSURANCE BEING UNAVAILABLE

● Mr. CHAFEE. Mr. President, as we consider this landmark bill to reauthorize Superfund, and to recommit the Nation to addressing the dangers of toxic wastes, we must not make the mistake of focusing our attention entirely on remedying problems created in the past. We must look to the future as well, and be mindful that hazardous waste management facilities, if not properly operated, can create new dangers, new harm to human health and the environment, and new Superfund sites that will have to be remedied by future generations.

One of the most important protections we have authorized in our national environmental legislation has been the requirement that those engaged in the business of hazardous waste generation and disposal demonstrate adequate financial responsibility for their potential liability. Those assurances are absolutely vital to the integrity of EPA's program under the Resource Conservation and Recovery Act.

And yet, I am troubled by the present lack of any meaningful environmental impairment liability insurance, and the dilemma created by EPA's blind insistance that owners and operators of hazardous waste facilities obtain such insurance. This situation is undermining the RCRA Program, and it may prove to be the Achilles' heel of the Superfund Program. If responsible, well operated facilities cannot meet EPA's current financial responsibility regulations, they may have to cease their operations, and we no longer can be confident that adequate disposal capacity will be available for either RCRA or Superfund wastes.

In addition, those few insurance policies which are available to the hazardous waste industry do not adequately protect innocent victims exposed to toxic wastes. EPA is well aware of this situation. Most EIL insurance policies today contain exclusions that would prevent the coverage, for instance, of claims for genetic damage, and claims arising out of the facility's noncompliance with laws and regulations, even when such noncompliance is unintentional and technical in nature. These are gaping loopholes in the policies, and they are only a few examples of the many ways an insurer could escape liability. If his insured is unable to pay, innocent victims will suffer.

In the Hazardous and Solid Waste Amendments of 1984, Congress took two important steps to address this dilemma. First, in section 3004(t)(1) Congress authorized facility owners and operators to use any one, or a combination, of mechanisms to provide assurance of their financial responsibility. These include not only insurance, but also guarantees, surety bonds, letters of credit, and self insurance. Given the current EIL insurance crisis, these are important and legitimate mechanisms.

EPA has not taken steps to change its regulations and authorize all of these various mechanisms. It is ignoring the mandates of the RCRA statute, and thereby threatening the existence of waste disposal capacity on which the Superfund Program will depend in the years ahead. The Agency must promptly amend its regulations and conform them to the statute before the November 8, 1985 RCRA deadline falls.

Second, in the same section of RCRA (3004(t)(1)), Congress authorized EPA to close the loopholes in insurance contracts. That section empowers the Administrator to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable to effectuate the purposes of RCRA. It is time EPA assumed the leadership in this area that Congress intended. The regulations should be revised to incorporate those restrictions for at least the loopholes of which EPA presently is aware.●

Mr. STAFFORD. Mr. President, I yield to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 682

(Purpose: Relating to remedial actions at Federal facilities)

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 682.

Mr. WILSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 111, strike out line 23 and all that follows through line 3 on page 112 and insert in lieu thereof the following:

"(1) RIFS.—Not later than six months after the inclusion of any facility on the National Priorities List (NPL), or within six months of the enactment of the Superfund Improvement Act of 1985, whichever is later, the department, agency, or instrumentality whichever is later, the department, agency, or instrumentality which owns or operates such facility shall enter into an agreement with the Administrator and appropriate State authorities under which such department, agency, or instrumentality will carry out a remedial investigation and feasibility study for such facility. The agreement shall provide for a timetable and deadlines for commencement and expeditious completion of such investigation and study.

On page 114; after line 13, insert the following:

"(d) STATE AND LOCAL PARTICIPATION—

(1) the Administrator shall consult with the relevant officials of the State and locality in which the facility is located and shall consider their views in selecting the remedial action to be carried out at the facility.

"(2) Each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and formulation of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans.".

Mr. WILSON. Mr. President, this amendment would add a new subsection to the provision in the bill dealing with Federal facilities. By Federal facilities, we are talking primarily of military bases, although the Department of Energy has a few sites now proposed to be added to the National Priority List and the Department of the Interior has some hazardous waste cleanup responsibilities as well.

When people think of toxic waste problems in California, they probably most often think of the much reported cleanup problems at the Stringfellow Acid Pits. An equally serious problem, though, is that of leaking toxic waste sites at military bases up and down the State.

I know this because I visited four of these bases this summer. Jet fuels and powerful degreasing agents that have been used over the years to clean airplanes, tanks, helicopters and other equipment have one way or another leaked into the environment and are now threatening to contaminate—or have already contaminated—underground drinking water supplies. This is such a serious problem that in one case, that of McClellan Air Force Base in Sacramento, the Air Force is providing bottled water to over 300 residents near the base whose ground water supplies have been contaminated.

Of course, California is not alone in this problem. Nationwide, 35 Defense Department installations have been proposed to be added to the EPA's National Priorities List. The unfortunate fact for California is that we have seven of these NPL sites.

It was not until 3 years ago that DOD began to seriously address this situation. They beefed up something then known as the Installation and Restoration Program and began in earnest to clean up toxic wastes at military sites. There is no doubt that this program has made some progress over the last 3 years, the question is whether the DOD has made enough progress.

I am convinced that the answer to this question is no, they have not made enough progress, the DOD has in fact been too slow in their response to the problem, and that congressional intervention on this issue is now warranted. By way of example, let me refer you to my experience at the Sharpe Army Depot near Stockton, CA.

When I visited this facility last June, I was under the impression that the base was well along its way to the cleanup of toxic degreasers that had leaked into the ground in the course of maintenance operations on Army equipment used during the Vietnam War. What I found was very disturbing.

Five-and-a-half years have ellapsed since ground water contamination was first suspected and the base has yet to define the extent of the hazardous waste contamination—much less design and implement a cleanup program. Five-and-a-half years working on this problem with no remedy yet in sight is appalling. And I am not alone in these concerns. EPA and State agency representatives visiting the Sharpe Army Base when I was there also expressed extreme frustration with Sharpe's lack of cleanup progress.

The bill before us today contains language to help address this problem. For one thing, timetables for cleanup action at Federal facilities are established in S. 51, an idea for which the bill's authors should be commended.

Another way to speed cleanup action is to mandate closer cooperation and coordination between Federal facilities and the appropriate State authorities who have a responsibility to protect the State's environment and public health. This kind of mandate is not contained in S. 51, and my amendment is designed to remedy this omission.

Earlier and more extensive consultation will help by bringing all the players into the process from the beginning rather than having to re-educate interested parties as they are allowed to become involved in the final implementation stages. Two examples from my home State of California will help illustrate my point here.

I am informed that at the McClellan Air Force Base in Sacramento, the Air Force refused to share any part of the DOD's equivalent of a remedial investigation and feasibility study with the State or the EPA until they were ready to release the report in final draft form. When the State reviewed the report, the Air Force was required to make major and time-consuming revisions not once, but twice, and all the while, toxic contaminants were continuing to pollute drinking water supplies near the McClellan Base. These delays took up to 2 years—2 years that very likely could have been avoided, had the State and the EPA been part of the response planning effort from the beginning.

At the Moffett Field Naval Air Station near San Francisco, I found a similar problem had emerged. To the exclusion of the State and the EPA, the Navy had negotiated a scope of work proposal with an environmental engineering contractor to determine the extent and characteristics of the suspected toxic waste contamination at this base. The Navy had gone so far as to let extent of the proposed assessment action.

Upon examination of what was an approximately $250,000 contract, the State, with EPA's concurrence, quickly determined that far more work was required and proceeded to negotiate an expanded scope of work proposal with the Navy. The two parties finally agreed that something in excess of $700,000 worth of work was required to know the extent of the suspected contamination.

The problem, however, is that it required over 6 months for the Navy to go through the procedures of modifying their existing contract to do the expanded scope of work. While we might find fault with the DOD's contracting procedures that make it so cumbersome and time-consuming to modify an existing contract or let a new one—a subject I intend to pursue at another time—my point is that the contract should never have had to undergo major revisions in the first place. The EPA and the State should have been at the table working out the proposed scope of action with the Navy from the very beginning.

I might add that while 6-month delays at Moffett or 2 years at McClellan might sound petty to those of my colleagues who have the good fortune of not having to worry about toxic waste problems in their States, it is in fact a very serious problem to those families and individuals who reside by these bases that are leaking toxic wastes and threatening their very health.

Specifically, my amendment requires Federal facilities to afford the EPA and the affected States the opportunity to participate in the development of all scope of work proposals for toxic waste cleanups; requires that data relating to any cleanup is made available to the States and EPA as soon as it becomes available from the contractor; and requires that the affected State and the EPA shall have the opportunity to participate in the planning and formulation of any remedial action plan.

In short, the role of the States and EPA should not be limited to just the review of final cleanup proposals, they should have an opportunity to make meaningful contributions in the development stages.

I have been informed that this amendment has the support of the administration, and I urge my colleagues to support its adoption.

Mr. President, this amendment has been cleared with both sides.

As briefly as I can, let me say that most people in California, perhaps in the West, probably think of the Stringfellow site when they are asked to think about toxic waste cleanup. The fact is that at any number of Federal installations, there is an almost equally serious problem. Most of these are at military bases—powerful degreasing agents, jet fuel, and a number of contaminants which were not suspected to be such several years ago have actually seeped into the ground and have contaminated and are contaminating underground water supplies. The problem is so well known I need not enlarge on it here.

What is not so well known, Mr. President, is the experience and history of local and State agencies attempting to deal with these Federal agencies as they approach the task of attempting to clean up this years-old hazardous waste.

This requires extensive consultation, not only with the Environmental Protection Agency, but with the State water resources and health agencies so as to avoid the kind of thing which occurred when, without this consultation, military facilities have finally, after some time, developed plans only to discover that in fact, they have a not-planned lawsuit on their hands as agencies that have not been permitted consultation seek appellate advice of the courts.

Mr. President, this finally affects us all as taxpayers and those concerned with cleanup of hazardous waste, by a delay and an increase in expenditure all the while these contaminants continue to threaten and actually pollute underwater or ground water supplies. So, Mr. President, what we are asking, very simply, is a change in the operating procedure of these Federal facilities as they go about this task of toxic waste cleanup.

It requires consultation with the relevant officials of the State and locality in which the facility is located and it requires much earlier participation on the part of those agents so they can be involved at a meaningful stage, really in the beginning, in the development of the plans and the development of the studies leading to the actual formulation of a toxic waste cleanup and not purely as the facilities are about to launch implementation.

Mr. President, I am not aware of any opposition to this amendment. I think it is a desirable change, one that will expedite actual cleanup and go a long way toward removing some of the obstacles that have been caused, intentionally or otherwise, by a lack of adequate cleanup of these and other sites.

Mr. STAFFORD. Mr. President, we have had an opportunity to examine the amendment offered by the distinguished Senator from California. Our staff was consulted in its preparation and for the majority we accept the amendment. We believe it is a good amendment.

Mr. WILSON. Mr. President, I thank the distinghished chairman of the committee for his cooperation. I have nothing further to say and I shall not require a rollcall.

Mr. BENTSEN. Mr. President, speaking for the minority on the committee, we have examined the amendment and think it is a good amendment. We are pleased to support it.

Mr. WILSON. I thank the minority member.

The PRESIDING OFFICER. Is there further debate? If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 682) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 683

(Purpose: To include fertilizer, animal feed, and raw materials used to produce them in the category of unprocessed agricultural products)

Mr. STAFFORD. Mr. President, I think the Senator from South Dakota wishes to offer an amendment.

Mr. ABDNOR. Mr. President, I ask the chairman, are amendments to section 2 in order?

Mr. STAFFORD. Mr. President, the Senator from Vermont will say this entire bill is open to amendment. The Senator from South Dakota may go ahead with an amendment if he wishes to.

Mr. ABDNOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. Abdnor], for himself and Mr. Dole, Mr. Grassley, Mr. Burdick, Mr. Simpson, Mr. Baucus, Mr. Zorinsky, Mr. Boschwitz, Mr. Symms, Mr. Boren, Mr. Durenberger, Mr. Nickles, Mr. Pryor, Mr. Andrews, and Mr. McClure proposes an amendment numbered 683.

On page 148, line 22, strike out "and fish" and insert in lieu thereof ", fish, fertilizer, animal feed, and any raw material used to manufacture fertilizer or animal feed".

Mr. ABDNOR. Mr. President, on behalf of myself, Senator Dole, Senator GRASSLEY, Senator BURDICK, Senator SIMPSON, Senator BAUCUS, Senator ZORINSKY, Senator BOSCHWITZ, Senator SYMMS, Senator BOREN, Senator DURENBERGER, Senator NICKLES, Senator PRYOR, Senator ANDREWS and Senator McCLURE, I am offering an amendment to include in the definition of "unprocessed agricultural products," as contained in the Superfund Revenue Act of 1985, fertilizer, animal feed, and any raw material used to manufacture fertilizer or animal feed.

This amendment is necessary to ensure that the excise tax will not impact negatively upon our Nation's farmers. At a time like this, I am sure that the cosponsors who join me in sponsoring this amendment feel that the imposition of a new tax on the agricultural sector is both unwise and unwarranted, particularly at this time.

Mr. President, I commend the chairman and ranking minority member of the Senate Finance Committee and their colleagues, for recognizing the need to exempt from the excise tax raw agricultural commodities. We must not take any action on this floor which will add to the severe financial burden borne by American farmers. In the absence of my amendment, we will increase the burden on the agricultural sector by $130 million over 5 years.

Mr. President, anyone who is familiar with agriculture knows that this is not the time to start heaping impose a new tax—either directly or indirectly—on the American farmer, who is having a hard time keeping his head above water. These are no ordinary times. They are severe and serious times that could affect the whole agricultural economy.

While Members of Congress were at home during the past 5 weeks of the recess, if they did not learn anything else, I think they found out how serious the agricultural situations truly is. Long before this subject came up, I was troubled by suggestions that we increase revenues by imposing an excise tax of $5 on each barrel of oil coming into this country.

Whom did we single out? The farmer, who could least afford it. Who uses the most fuel in their operations? The farmers. On whom are we going to put the tax to raise revenues? The farmers.

Maybe this is an exception, but when things are drastic and the consequences are serious, as they are today for agriculture, we had better take extraordinary and unusual steps to correct them. We must not impose yet another burden on our troubled agricultural sector.

Mr. President, the amendment I am offering along with several of my colleagues is a technical amendment that clarifies the intent of Congress to include fertilizer, animal feed, and raw materials used to manufacture fertilizer and animal feed within the category of unprocessed agricultural products, under section 4031(f) of S. 51, not subject to the Superfund excise tax.

This amendment is also consistent with the fertilizer and animal feed exemptions already contained within S. 51 approved by both the Senate Committee on Finance and the Committee on Environment and Public Works, and H.R. 2817, approved by the House Energy and Commerce Subcommittee on Commerce, Transportation and Tourism in June.

EPA studies mandated by section 301(a)(1)(H) of the Superfund law we enacted in 1980 have confirmed the findings made by Congress in exempting fertilizer raw materials from Superfund feedstock taxes: fertilizer and fertilizer raw materials have not contributed to the environmental problems associated with abandoned hazardous waste disposal sites.

By exempting unprocessed agricultural products from the Superfund excised tax we have recognized that the agricultural sector of the American economy is financially hard pressed and that we can ill afford to impose new tax burdens on the American farmer. The amendment we are offering recognizes Congress' intent to minimize unnecessary new tax burdens on the agricultural sector of our economy.

It is contemplated that the Secretary of the Treasury will prescribe such regulations as may be necessary to implement this exemption—including regulations concerning any necessary tax refund in a manner consistent with the exemption from the tax on certain chemicals provided by sections 4662(b)(2) and 4662(d)(2) of the Code. Therefore, this amendment expresses the intent of Congress that the term "raw materials used to manufacture fertilizer," as used in seciton 4031(f), be interpreted to include materials which are essential to the production of fertilizer—such as methane used to produce ammonia, sulfur and sulfuric acid used as a nutrient in fertilizer or in the production of fertilizer—as well as materials which are used directly in fertilizer production. This interpretation is also intended to apply to raw materials used to manufacture animal feed.

Mr. President, I urge my colleagues to join us in support of this vital amendment, which we offer on behalf of our Nation's farmers.

Mr. PACKWOOD. Mr. President, will the Senator from South Dakota yield for some questions?

Mr. ABDNOR. I yield.

Mr. PACKWOOD. Is the basis for the exemption the Senator asks premised upon the hard times that agriculture is now having?

Mr. ABDNOR. That certainly is a large part of it, yes. I represent, perhaps, the most agricultural State in the United States. In saying that, I do not mean to imply that some other States do not produce more agriculture products. Rather, I am saying that on a per capita basis, no State produces more than my State. South Dakota is totally agricultural—agriculture is our number one industry.

The administration does not favor this new tax and I certainly must oppose the imposition of a new tax on our agricultural sector.

Mr. PACKWOOD. Let me rephrase my question.

In adopting this excise tax, we have encompassed all manufacturers with more than $5 million in sales. We have exempted all small manufacturers. To the extent that small manufacturers make fertilizer and animal feed, they are already exempt. We have convered all other businesses in the excise tax, whether or not they contribute to pollution.

Does the Senator agree to that?

Mr. ABDNOR. I do not wish to create a big argument here but, I must ask the Senator from Oregon, has he not exempted timber and fish? Does the bill before us exempt tuna fish in the can?

Mr. PACKWOOD. My good friend knows that is not true. We have exempted unprocessed agricultural products from the excise tax.

Mr. ABDNOR. Unprocessed?

Mr. PACKWOOD. Unprocessed agricultural products, including timber, which is a tree that you cut down, and fish which you catch. Once the fish goes to the cannery, once the log goes to the mill, once the wheat goes to the miller, they pay the excise tax.

Mr. ABDNOR. That is the Senator's interpretation. Is this clarified in the committee report? I don't believe it is. I believe a broader interpretation might be applied. At what point is the fish taxed? After it is scaled, after it is frozen, at what point is it considered processed, as opposed to unprocessed.

Mr. PACKWOOD. It is very clear. It says unprocessed.

Mr. ABDNOR. I do not believe it is clear.

However, this was not going to be my point of argument. My point of argument is that this is not the time to be imposing new taxes on American farmers. Plus, they do not make a contribution to the problem we are trying to correct through CERCLA.

Mr. PACKWOOD. Mr. President——

Mr. ABDNOR. I have the floor, but I will yield.

The PRESIDING OFFICER. The Senator from Oregon has the floor now.

Mr. PACKWOOD. I am glad that my distinguished colleague now indicates that the principle reason for exempting agriculture is that this is not the right time to put a tax on agriculture. Every industry that is going to be subject to this excise tax, as best as I can tell, does not want to be subject to this excise tax.

On October 30, 1985, 95 organizations and manufacturers sent a letter to the chairman of the Ways and Means Committee, Chairman ROSTENKOWSKI, asking the Ways and Means Committee to exempt them from the Superfund tax. The Ways and Means Committee has not acted yet, and I do not know what they are going to do.

But among those were the American Apparel Manufacturers Association, the American Textile Manufacturers Institute, the National Tooling and Machining Association—all of those hard pressed by imports, all of those who would say they are in as dire straits as agriculture.

I understand why agriculture does not want to be covered. I understand, and I might read some of the other manufacturers on the list—American Standard, Carnation, Litton, Deere, Whirlpool, Caterpillar, General Motors, and on and on—that do not want to be covered.

Here is what we were up against. Fertilizer is already exempt. Under the current feedstock tax. S. 51 provides an additional exemption, from the feedstock tax, for animal feed.

Superfund runs out the end of this month. Over the last 5 years it has been a $1.5 billion program. Over the next 5 years if the Senate bill passes it is going to be roughly a $7.5 billion program.

So we have to decide where we are going to find $6 billion. Shall we increase the feedstock tax? Feedstocks are the basic building blocks out of which most other products are made.

If we increase the feedstock tax we further damage the trade imbalances between domestically produced feedstocks and imported goods made from these feedstock building blocks. When we tax the feedstock and export the plastic toy, we have taxed the feedstock when it went into the plastic toy, but the plastic toy when it comes into this country from a foreign country has never had a feedstock tax imposed on it.

We did not want to increase the feedstock tax and damage our trade. We did not want to increase the petroleum tax.

The administration suggested a form of a waste end tax which met almost universal disapproval. There was a controversy concerning whether hazardous waste subject to tax should be measured by wet weight or dry weight. There was strong environmental objection to a waste end tax because they were afraid that it would encourage unsound waste disposal practices.

So we dismissed that, and there was no serious support for a waste end tax.

The administration does not support this funding level. They only want $5 billion. But we had that debate several days ago in this Chamber. The Senator from Idaho offered a funding amendment. It was soundly thrashed.

So if we were going to get $7.5 billion, where do we go?

I went back to the administration and said what about giving us some alternative methods of taxation? They initially gave me a list that had about $40 billion in taxes on it, cigarette taxes included, and said, "If you pick from among these." I said, "No, no, you are not going to get me to pick from among these. You tell me where you want to get the money specifically."

What they finally came back with is a suggestion that half of this program be funded out of general funds, that is, out of the deficit.

We said that is not going to do, when we are running a $200 billion deficit. It is out of the question to increase the deficit further by roughly $3.5 billion to $4 billion to fund the Superfund Program.

Then we began to get the information on those manufacturers who are actually involved in pollution in this country. It is interesting to read the list of those who signed the letter to Chairman ROSTENKOWSKI, signed the letter not wanting to be taxed, who had been named as responsible parties to abandon hazardous waste sites—American Standard, Carnation, Litton, Gould, Whirlpool, General Motors, Ralston-Purina, Beatrice, Eaton, White Consolidated, and others. They are already polluting and not paying anything under the current feedstock tax or the petroleum tax.

Then when we had the marvelous study indicating who benefits from these chemicals that are produced, and it became apparent that all of America benefits. So we came up with a very minor tax, with great credit to Senators BENTSEN, WALLOP, ROTH, and LONG, of 0.08 percent on manufacturers with sales in excess of $5 million. We eliminated small manufacturers and we said henceforth the standard will be as follows: We will have a feedstock tax at the same level we now have it. We will have a petroleum tax at the same level we now have it—these two taxes produce about $1½ billion of the $7½ billion, and the remainder of it in bulk we will finance out of this tiny excise tax. And we are going to levy it on all manufacturers over $5 million, whether or not they have been found to contribute to the pollution or whether or not they do, because everyone benefits in this country from the products made.

Bear in mind, we already exempt animal feed and fertilizer from the feedstock tax. Under the amendment of the Senator from South Dakota, agriculture now wants to be exempt from the excise tax in terms of the fertilizer and the animal feed that they use, although they are already exempt for unprocessed agricultural products. Everything they grow under the excise tax is already exempt, and now they want to exempt the products they buy from the companies.

I ask you in that case where does it stop? If agriculture is hurting, are tex-

tiles not? Are those who manufacture oil rigs hurting? I might ask the Senator from Texas. Are they hurting? Are there industries in this country that are so well off they can afford this tax? Of course none of them are.

This is an American problem for which all Americans are going to be paying a very slight amount.

If we start down the road of saying yes, but not me, but not me, but not me, then what we have is the Tax Code again. We are all in favor of tax reform, but not me.

I find it almost criminal after the extraordinary exemptions in both the feedstock tax and the excise tax that agriculture already has, that they now want to exempt fertilizer and animal feed.

This, they say, is one little exemption that does not cost much. Every one of these other 95 companies wants a little exemption that does not cost much. Add it all up and the cost is huge.

Mr. BENTSEN. Mr. President, the Senator from South Dakota is certainly right when he talks about the farmers being in trouble. I know what is happening to the farmers in South Dakota and to those in Texas and across this Nation. I have never seen the foreclosure rate as high as it is now, and we are all concerned about them.

In the Finance Committee, we were concerned to the point that as we proposed this Superfund tax we gave a total exemption for unprocessed agricultural products. This is the only exemption that we have given, the only one, in recognition of that very factor that he is talking about.

Now he proposes to exempt fertilizer. Well, if you are going to exempt fertilizer, you have to look at farming as a very capital-intensive business. How about the tractors? How about those pickups? Where do you stop?

Then if you do that for agriculture, as my friend Senator PACKWOOD, the chairman of the Finance Committee, stated, how about all the other industries that are involved?

So I say to my friend from South Dakota, I sympathize with what he is trying to do and what he wants to do, but I do not know where we draw the line. If we give that kind of exemption to the fertilizer industry, then how about the rest of them? I just do not think we should start down the road of trying to put together a fair tax, a **manufacturer's excise tax, for Superfund, only to see the tax riddled with exceptions at this point.**

I will tell you this, if the Senator wins on his amendment, we would be here not only the rest of the day but the rest of the week as Senators lined up with their amendments to say, "I want to take care of my special interest in my particular State."

So I would urge very strongly that the Senate resist this. I see that the Senator has some very fine sponsors on his amendment. But I believe that many of those sponsors signed up without fully realizing what we faced in the Finance Committee in trying to structure this measure.

Mr. President, with the indulgence of my colleagues, I would like to describe the process the Finance Committee went through to put the Superfund excise tax together.

The problem of how to fund the Superfund is really a question of how to choose among unpleasant alternatives. No one likes to propose new taxes; no one likes to propose increasing the deficit.

Look what we were faced with in the Finance Committee: The current Superfund Program is approximately $300 million per year in size. There is almost unanimous agreement that the program should be expanded very significantly. At the low end, the administration proposes to increase the program more than threefold. The Envionment and Public Works Committee reported out a bill expanding the program about fivefold.

So the Finance Committee was faced with financing a very much larger Superfund Program. And there are no easy ways to raise taxes.

One fact was clear to the committee: Raising the current tax—the so-called feedstock tax on chemicals—is a bad choice. The feedstock tax was originally enacted not for reasons of equity, but for reasons of convenience: It was convenient to impose a tax on chemical companies. But we must recognize that Superfund is a much broader problem. Chemical companies may produce chemicals; but other manufacturers use them and dispose of them.

We also have to recognize that we are talking about cleaning up sites for which responsibility is unknown. Any company that currently generates waste is responsible for that waste. And parties identified as responsible for a Superfund site have to pay to clean up the site. We are talking here about unidentified sites that could be 20, 30, 50 years old. Why should one industry be responsible for all unidentified sites?

Nor can one industry support a substantially expanded Superfund. The revenues required under the original law could be collected without significant economic side effects, but there is just no question that increasing the feedstock tax would simply drive our chemical and petrochemical industry offshore. And it's very simple to understand why: If you're a U.S. chemical company in Saudi Arabia you can sell your products to your customers without incurring the tax; so why should you produce any chemicals in the United States, where your profits will be taxed away by the feedstock tax?

As it is, our chemcial industry could go the way of the steel industry or the footwear industry. Currently the chemical industry is one American bright spot, with a trade surplus of more than $10 billion last year. But the Wall Street Journal reported on May 13 of this year that chemical industry profits fell 37 percent in the first quarter—over three times greater than the drop among all industries. Do we want a declining tax base for the Superfund? No, we want a reliable and predictable source of revenue. Even with a strong recovery in the industry, Saudi Arabia and other oil countries are bringing new refining and chemical capacity on line, and this competition will continue to squeeze prices and profits.

For all these reasons, the committee rejected any increase in the feedstock tax.

Another possibility considered by the committee was a tax on hazardous wastes—a so-called waste-end tax. It is certainly an attractive idea to have a tax that would induce companies to minimize the creation of hazardous wastes. And in fact, with the Senator form New York, Mr. MOYNIHAN, I introduced a bill in the last Congress and again early this year calling for a waste-end tax for Superfund.

But the problem with a waste-end tax is primarily that, by itself, it cannot raise enough money to fund the program adequately. The usual estimates for the waste end bills that have been introduced are that they could raise no more than $300 million per year, which is far short of the revenue needed for the program.

I realize that the administration proposed a waste-end tax that they estimated would raise about $600 million per year, but most experts who have looked at it are very dubious about this estimate. In addition, the administration's proposal would tax wastewater to achieve much of its revenue, even though wastewater has not been responsible for Superfund sites and usually contains little hazardous material.

The issue of whether to tax wastewater is merely one of numerous issues concerning exactly how to structure a waste-end tax. For example, should underground injection of hazardous wastes be taxed? Should wastes headed for treatment be taxed? Should the tax be computed on a wet-weight basis or a dry-weight basis? These are some of the nettlesome issues in putting together a waste-end tax. The committee felt that it probably did not make sense to resolve all these issues if the revenues were going to be insufficient anyway.

So the committee turned to broad based taxes. There were several proposals before the committee. My colleague from New Jersey, Senator BRADLEY, who has been a leader in the effort to reauthorize the Superfund Program, had proposed a tax on the net receipts of large corporations. Senators CHAFEE and MITCHELL had suggested an additional income tax for large corporations. And Senator WALLOP and I introduced a bill calling for a manufacturers excise tax. The committee eventually approved the manufacturers excise tax. The committee also worked closely with Senator BRADLEY, and adopted features of his net receipts tax proposal.

Now why did we choose a manufacturers excise tax? I suppose an income-tax surcharge for corporations would have been the simplest solution. But most of us feel income-tax rates are high enough as they are. More importantly, the committee felt that it is time for tax policy to take into account our country's competitiveness in the world economy.

The problem with corporate-income taxes is simple: Corporate-income taxes represent a cost of doing business for U.S. companies trying to compete against foreign goods. Foreign goods brought into this country do not bear the burden of our income tax. To impose a corporate-income-tax surcharge can only increase the cost of doing business for U.S. companies and reduce their competitiveness in the world economy.

The Superfund excise tax avoids this problem by taxing imports and exempting exports. So all products sold in this country, whether imported or domestic, will bear the same tax. And U.S. exports will not bear a tax that foreign goods do not bear. European countries have been doing this for decades.

It may be true that the trade effect of this bill is not large by itself. But that isn't the point, it seems to me. Trade effects accumulate. Neither the Congress nor the executive branch of our Government has given much thought to trade in recent years. We thought we did not have to. Well, we have to. And it simply doesn't make sense to enact any new revenue measures that cannot be applied to imports and foregone on exports.

I think that a manufacturers tax also has a clear relationship to the Superfund problem. Almost all manufacturers, not just the chemical industry, have either contributed to pollution directly, or have made use of products that gave rise to pollution. Take the supposedly clean high-tech industry. How come some of the worst Superfund sites are in Silicon Valley? It is because of solvents used by chip manufacturers. And how about grocery manufacturers? Cardboard boxes, plastic wraps, inks, and other chemical products are indispensible to this industry.

Sure, chemicals are found in Superfund sites, but does that mean the chemical companies put them there? Sometimes yes, but at least as often, no. Take a look at the list of the parties identified as responsible for the Stringfellow site in California. You will find names like General Foods, Carrier, Hughes Aircraft, and Teledyne.

In putting together the new Superfund tax, we also wanted to keep it as simple as possible. One feature we built in is an exemption for manufacturers that have less than $5 million in sales. According to the Joint Tax Committee, this limits the number of taxpayers to about 30,000.

Even with the liberal exemption for small manufacturers the tax rate in the bill is still very low—only 0.08 percent. That is only $4,000 on sales of $5 million.

The Superfund excise tax also will require little or no additional recordkeeping. It piggybacks onto numbers and concepts already required for income-tax returns. It also has a simple credit mechanism to mitigate multiple taxation as a product moves through the chain of production. Each manufacturer along the chain will receive a credit for tax included in materials that they buy for the business. To compute the credit, no invoices or other records showing the tax actually paid on the materials will be required. Instead, under a formula, taxpayers will simply compute the credit from the gross amount paid for materials.

In summary, Mr. President, the Finance Committee has chosen a manufacturers excise tax as the best alternative for significantly expanding the Superfund Program. I urge the Senate to approve our measure, and I urge the Senate to turn down the amendment of the Senator from South Dakota.

Mr. DURENBERGER. Mr. President, I rise to support the amendment offered by the Senator from South Dakota. I am a member of the Finance Committee, as well as a member of the Environment and Public Works Committee, as are a number of our colleagues here.

I guess I would begin my discussion of the issue on the question posed to the maker of the amendment by the chairman of the Finance Committee, and that is why does he propose the exemption? I think we all heard the response. I will answer it somewhat differently with regard to this exemption and perhaps with regard to some other exemptions that I might be able to dream up, but I will not, I say to my colleague from Texas, I will not in any way. If I had the opportunity, or if I had been given the opportunity by the administration, which seems to be dead set against this excise, to assist them in some way in altering this tax and replacing it with some other tax, I would be here doing that rather than what I am doing now.

But I would answer the question this way: I would go back to the list that the chairman of the Finance Committee put out. He only started to read the list and I am sure it is much, much longer than he was able to read into the RECORD. The reality is that there are a whole lot of people in this country that do not want this particular tax added to the cost of doing business in this country. Some of them are as hard-pressed as farmers and machine tool manufacturers and so forth, and others who are doing pretty well, the General Motors and some of the other people on that particular list.

But if I were looking for what might be a common thread that might tie some of these objections that goes beyond the hardship case made for farmers by my colleague from South Dakota, I would say that most of these people, if asked:

> Should this country have some kind of a consumption tax, some kind of a value added tax, something that taxes the consumption of goods and services in this country rather than taxing the people who have to go to work to make these goods and services?

I will bet you that a vast majority of the people in this country would say:

> I'm for it. I would much rather have a part of the tax for producing goods and services in this country be on the consumers of those goods and services than have the whole load dumped on the producers.

Nobody else around the world does it the way we do it. The consumers get off scot-free. Only the producer in this country, the worker in this country, pays for the privilege of putting a good or service on the market.

So I think if all those people on that list were here and asked, "Why do you propose to be exempted from the tax?" they would say:

> Not because I'm against a manufacturers tax, but because when this country goes to some kind of consumption tax, goes to some kind of value added tax, I want to get something for it. I want to get something back.

If it went to deficit reduction and we knew it went to deficit reduction, then I think the farmers would say:

> By gosh, anything you can do to reduce the deficit ought to help the balance of trade and ought to help the currency and ought to help this, that, and the other thing, and it is going to help me on the farm.

The same thing would be said by the machine tool people and a lot of other people that are hard pressed by the impact of the deficit.

I suspect that if you said the proceeds of this tax are going to reduce the growth in the payroll tax, the Social Security tax, which we are going to take up from a maximum this year of $5,400 per worker in America to $8,000 per workers 3½ years from now, and if we used some kind of a consumption tax or manufacturer's excise tax or producer's excise tax, or whatever it is, to slow the rate of growth of taxing the American worker in this country, I suspect people would say, "That is not too bad an idea," particularly if you are a farmer and on the first dollar of your income you are starting to pay a Social Security tax in this country and on the last dollar, at $39,000, or whatever it will be, you are up somewhere in the neighborhood of 14 percent.

I guess that, for sure, in effect—and the chairman of the committee can correct me—for sure, by the end of this decade, we are going to have a full-blown 15.3 percent Social Security tax on every self-employed person in this country, including those farmers, for a Social Security system that is $7 trillion unfunded at the present time.

So if they had that kind of a trade-off, Mr. President, if they could say, "When I pay that on my fertilizer, or I pay it on whatever, I am going to get something back for it in terms of a reduced payroll tax," maybe the Senator from South Dakota would not be on the floor with his exemption. But they are not.

What are they getting for it? What are they getting for it? I really do not know what the farmers of South Dakota are getting for it. I know what New Jersey will get for it. New Jersey will get the help of General Mills in Minnesota and the farmer next door to Senator ABDNOR in South Dakota to help clean up a lot of toxic waste disposal areas in New Jersey which New Jersey permitted them to go ahead and put there in the first place. So I think someone in South Dakota would scratch his head and say:

> Hey, wait a minute. Why are you putting this brand new tax, this brand new consumption tax, this price of doing business on a business I cannot afford anyway? Why are you putting that on me to do something with toxic waste? What is the connection between what I am doing in agriculture and these toxic waste dumps?

Now, as we go through the chairman's list of manufacturers, I suspect we could find some manufacturer who probably should not be on the list of complainers, manufacturers like General Motors, who have elaborate paint plants. They spray paint on all of the automobiles and in the finishing process and they then use huge amounts of water to take those chemicals out, perhaps into some river like the Mississippi River. I believe that Ford Motor Co. does that in my State. Now, there is a way in which there is some logical connection between a manufacturer's excise tax and a pollution problem of some kind. I could probably think of other examples, but they just do not seem to come to me right now.

But I think if you went through some of these lists of companies that manufacture, Mr. President, who use chemicals of one kind or another in the manufacturing process, which chemicals end up being a pollutant of some kind, I suppose you could find a logical connection between their obligation to share in the cost of the Superfund and the obligation that we have already saddled on the chemical industry in this country.

But to take it to the farmers, to take it out to everybody, Mr. President, all this is opening the door to a large tax that the President has already said he does not want and he is going to veto, to a large tax that I happen to support if it were used for a productive purpose.

But in connection with the bill before us, the Superfund bill, my greatest concern about it, and the reason that I really do support my colleague from South Dakota is simply that once you turn on the spigot of the manufacturers' excise tax it is a freebie. As soon as you hit $5 billion sales, whatever the magic mark is, on comes your spigot. You start paying the manufacturers' excise tax and the more folks who get in that category the more people will take the obligation to pay the manufacturers' excise tax, by gosh the more money there is going to be in the Superfund fund, and the more money there is in the Superfund fund the more reasons we are going to have to pay to expand that fund, and the more reasons we are going to get into that fund to use that money for Lord knows what.

You can find any kind of contamination anywhere; go into Superfund and take some of that money out of there. And pretty soon you do not know whether the fund is driving the spigot or the spigot is driving the fund, or whatever it is. But we have gone beyond the intention of a very good piece of environmental legislation in Superfund because we have designed in the Finance Committee this new spigot which, Mr. President, I think this country needs, and I compliment the committee. I compliment my colleagues from Oregon, and Texas, and all the other people who had a role in designing this thing. I think this country needs it. But I do not think they need it on this particular piece of legislation. For sure, if it is going to be on this piece of legislation, do not put it on the farmers of this country.

Mr. ABDNOR. I thank my good friend, the Senator from Minnesota, for those words. Let me first say of the many sponsors that I have listed to my amendment a good many of them serve on the Finance Committee. So it is not reasonable to say that those individuals did not realize and recognize what they were doing when they put their names on my amendment.

I can also ask the question: Just name one site, one agricultural Superfund site—just one. In 1980, we mandated a study under the original Superfund bill which includes an assessment of the extent to which fertilizer contributes to our waste site problems. Let me quote EPA's 301(a) report:

> There is little evidence that fund resources have been or may be used to respond to fertilizer-related chemicals. Of approximately 210 removals that occurred between December 1980 and September 1983 only one—

only one—

> is likely to be fertilizer related. Similarly, analysis of remedial action data indicate no information—

no information—

> which clearly suggests fertilizer-related fund expenditure experience.

There is one comment I must make to the Senator from Minnesota. The farmer has to make a little income before he pays any of those taxes. I can assure you without any reservation, a good percentage of the farmers of this country are not worried about paying any taxes because they will show a loss this year, as they have in other years. Their biggest cost next to the interest they are paying on their 212 billion dollars' worth of indebtedness is fertilizer and feed, the very products we are attempting to tax through S. 51. Let me point out one other major difficulty, as I feel so strongly about this. Name one of those groups which was cited which would contribute to this fund that will not pass it on to somebody. You tell us for

I second, gentlemen, how the farmer is going to pass this added cost on. I can tell you right, he is getting $1 less for corn this year than he did a year ago.

I personally can tell you I got more for wheat at the end of World War II than a farmer gets today. Yet, we pass on cost after cost after cost. We are not satisfied. This bill imposes an additional burden on our Nation's farmers, even though they are not making any income. This bill requires that they contribute to cleaning up somebody else's waste sites. I hope my colleagues recognize that and think about that for a moment.

I sat in this Chamber, and I have seen a great many measures passed that have provided some relief and consideration to groups that were hurting. Think of the unemployment tax. When the dollars ran out of the fund, we did not hesitate to go to the Treasury for additional dollars. Speaking of unemployment, the people who were unemployed at that moment were making more money through their unemployment compensation than my farmers were every morning they started up their tractor to go to work. Yet, not much consideration is being given to the farmers in this revenue-raising scheme. I wonder what the new farm bill will include. That will depend upon this body and what we do with it. Hopefully, our farmers will start showing some profits. However, I see little reason for encouragement.

I cannot believe that the Members of this U.S. Senate would stand here on the floor today and cast a vote to add another straw to the back of the American farmer that is going to break that back. That is the position he is in. You bet, Mr. Chairman. I admit my amendment is intended to help the farmers of this Nation. I do not apologize for that. Maybe it is an exception. But this is a time for exceptional things when agriculture is depressed and hurting as badly as it is today. I hope Senators who are not here today on the floor, and I regret that four of the cosponsors of my amendment are necessarily absent, at this moment are listening and will give this issue very, very serious consideration because I would like to ask for a rollcall vote, Mr. President.

The PRESIDING OFFICER. Is the Senator requesting the yeas and nays?

Mr. ABDNOR. Yes.

The PRESIDING OFFICER. Is there a sufficient second? Thee is a sufficient second.

The yeas and hays were ordered.

Mr. GRASSLEY. Mr. President, I join with my colleague, Mr. Abdnor, and others in offering this amendment that would extend the catagory of unprocessed agricultural products to include fertilizer, animal feed, and raw materials used to produce fertilizer and animal feed, for exemption from the Superfund excise tax.

This amendment would extend to fertiliser and animal feed the same exemption from tax these products are currently accorded under the Superfund feedstock tax. The cost of cleaning up hazardous waste sights should not be borne by the farmers in my State of Iowa. They cannot afford additional burdens at a time when their cost of production already exceeds the price they receive for their crops.

EPA studies have confirmed that fertiliser and ferilizer raw materials have not contributed to the environmental problems associated with abandoned hazardous waste disposal sights. An exemption from the Superfund excise tax for fertilizer would confirm the intent of Congress to minimize any additional tax burdens which would be passed on directly to our Nation's farmers.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I conclude as follows: How many times have we heard Senator Long, the distinguished former chairman of the Finance Committee, say, "Don't tax you, don't tax me, tax the man behind the tree." We have already exempted in this bill from the excise tax the principal product from which farmers make money—their crops. I assume that is what most farmers make money from. If they make any money at all, it is out of what they grow—which is totally exempt. I will say once more this excise tax was added because we turned and turned and turned to dozens and said where else do you want to get the money? This administration that claims to be adamant against the deficit says get half of it out of the general fund. They could not find any other tax. We go to everyone who opposes the excise tax and say, "Do you want us to increase the feedstock tax?" "No." "Petroleum tax?" "No." "Special manufacturers' corporate surtax?" "No." "Where?" "Oh, I don't know. But don't tax me."

I asked my good friend from South Dakota where to get the money. He said, "I don't know. Don't tax farmers." And we have exempted farmers from the bulk of this tax and what they are saying is give me more. If that is where we stand as we approach this tax and the tax reform bill, give me more. God help this country.

The **PRESIDING OFFICER.** Is there further debate? If not, the question is on the amendment of the Senator from South Dakota. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. **SIMPSON.** I announce that the Senator from North Dakota [Mr. ANDREWS], the Senator from North Carolina [Mr. EAST], and the Senator from Oklahoma [Mr. NICKLES] are necessarily absent.

Mr. **CRANSTON.** I announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Oklahoma [Mr. BOREN] are necessarily absent.

I also announce that the Senator from Montana [Mr. BAUCUS] is absent because of death in the family.

I further announce that, if present and voting the Senator from Montana [Mr. BAUCUS] would vote "yea."

The **PRESIDING OFFICER** (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 48, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—46

Abdnor
Armstrong
Bingaman
Boschwitz
Bumpers
Burdick
Byrd
Chiles
Cochran
D'Amato
DeConcini
Denton
Dixon
Dole
Domenici
Durenberger
Exon
Ford
Garn
Grassley
Hatch
Hawkins
Heflin
Helms
Hollings
Johnston
Kasten
Laxalt
Levin
Mattingly
McClure
Melcher
Murkowski
Pressler
Proxmire
Pryor
Simpson
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wilson
Zorinsky

NAYS—48

Bentsen
Bradley
Chafee
Cohen
Cranston
Danforth
Dodd
Hatfield
Hecht
Heinz
Humphrey
Inouye
Kassebaum
Kennedy
Mitchell
Moynihan
Nunn
Packwood
Pell
Quayle
Riegle
Eagleton
Evans
Glenn
Goldwater
Gore
Gorton
Gramm
Harkin
Hart
Kerry
Lautenberg
Leahy
Long
Lugar
Mathias
Matsunaga
McConnell
Metzenbaum
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Specter
Stafford
Wallop

NOT VOTING—6

Andrews
Baucus
Biden
Boren
East
Nickles

So the amendment (No. 683) was rejected.

Mr. **PACKWOOD.** Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. **METZENBAUM.** Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 684

(Purpose: Relating to remedial actions at Federal facilities)

Mr. **WILSON.** Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 684.

Mr. **WILSON.** Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, add the following new section:

"DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

SEC. . (A) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense (hereafter in this section referred to as the "Secretary") shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program.'

"(2) APPLICATION OF SECTION 117.—The program shall be carried out subject to section 117 (relating to Federal facilities).

"(3) DESIGNATION OF ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have the responsibility for carrying out the program.

"(b) PROGRAM GOALS.—Goals of the program shall include the following:

"(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances and wastes.

"(2) Correction of other environmental damage, such as detection and disposal of unexploded ordnance, which creates an imminent and substantial endangerment to the public health or welfare, or to the environment.

"(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

"(c) Responsibility for Response Actions.—

"(1) Basic responsibility.—The Secretary shall carry out (in accordance with the provisions of and this title) all response action for which the Secretary is responsible with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the administrative jurisdiction of the Secretary.

"(B) Each facility or site which was under the administrative jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel of the Department of Defense, including vessels owned or bareboat chartered and operated.

"(2) State fees and charges.—The Secretary shall pay all fees and charges imposed by State authorities for permit services for the storage or disposal (or both) of hazardous substances on lands which are under the administrative jurisdiction of the Secretary to the same extent that nongovernmental entities are subject to fees and charges imposed by State authorities for permit services. This requirement shall not apply where such payment is the responsibility of a lessee, contractor, or other private person.

"(d) Services of other agencies.—The Secretary may enter into agreements with any other federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of his responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contaminations possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's administrative jurisdiction.

"(e) Environmental Restoration Transfer Account.—

"(1) Establishment of transfer account.—

"(A) Establishment.—There is hereby established an annual appropriation account for the Department of Defense to be known as the 'Environmental Restoration, Defense' account (hereinafter in this section referred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary relating to environmental restoration under this or any other Act shall be appropriated to the transfer account.

"(B) Requirement of authorization of appropriations.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(C) Availability of funds in transfer account.—Amounts appropriated to the transfer account shall remain available until transferred under paragraph (2).

"(2) Authority to transfer to other DOD accounts.—Amounts in the transfer account shall be available to be transferred by the Secretary to any other appropriation account or fund. Funds so transferred shall be merged and available for the same purposes and for the same period as the account or fund to which transferred.

"(3) Obligation of transferred amounts.—Funds transferred under subsection (b) and subsection (e)(2) may only be obligated or expended from the account or fund to which transferred in order to carry-out the functions of the Secretary under this Act of environmental restoration functions under any other Act, including functions for removal of unsafe buildings or debris of the Department of Defense at sites formerly used by the Department of Defense.

"(4) Limitation on expenditures.—

"(A) General rule.—The Secretary may not obligate or expend funds for purposes of this Act or any other purpose relating to environmental restoration other than funds transferred from the transfer account.

"(B) Exception for emergency response action.—The Secretary may obligate or expend funds which are available to the Secretary for operation and maintenance to carry out emergency response actions authorized under this Act whenever the Secretary determines that such obligation or expenditure is necessary to protect the public health or welfare, or the environment. In any such case, the operation and maintenance account concerned shall be reimbursed from the transfer account.

(C) Reprogramming.—Any reprogramming request relating to environmental restoration into the transfer account must be forwarded to the Senate Armed Services Committee, the House Armed Services Committee, the Senate Appropriations Committee and the House Appropriations Committee on a notification basis. The request for reprogramming will be considered approved unless action to the contrary is taken by any one of those committees within a 21-day period beginning on the date of the notification is received by those committees (or after each such committee has approved the reprogramming request, if the committees approved the request before the end of that period).

"(5) Amounts recovered under subtitle A.—Amounts recovered under section 107 for response actions of the Secretary shall be credited to the transfer account (if appropriated by Congress for that purpose).

"(f) Military Construction for Response Action.—

"(1) AUTHORITY.—Subject to subsection (b), the Secretary may carry out a military construction project not otherwise authorized by law if necessary to carry out a response action under this Act.

"(2) CONGRESSIONAL NOTICE-AND-WAIT.—

(A) NOTICE TO CONGRESS.—When a decision is made to carry out a military construction project under this section, the Secretary shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the following:

"(i) The justification for the project and the current estimate of the cost of the project.

"(ii) The justification for carrying out the project under this section.

"(iii) A statement of the source of the funds to be used to carry out the project.

"(B) OVERSIGHT PERIOD.—The project may then be carried out only after the end of the 21-day period beginning on the date of the notification is received by those committees (or after each such committee has approved the project, if the committees approved the project before the end of that period).".

Mr. WILSON. Mr. President, this amendment is one that has been cleared with both sides of the aisle. It is designed to provide necessary tools to the Department of Defense in their efforts to clean up hazardous wastes at military sites across the country. It seeks to do two things which will remove conflict and expedite the implementation of this toxic waste cleanup at military bases.

The amendment establishes, first, an environmental restoration program within the Defense Department and sets up an accounting mechanism within the DOD budget designed to give the military the funding flexibility they need to respond in a timely fashion to the threat of toxic waste contamination. This amendment essentially authorizes a program that—with great foresight—was created by line-item appropriation by my good friend, the senior Senator from Alaska, the distinguished chairman of the Defense Appropriations Subcommittee.

The major change made by this amendment to the existing program is really an accounting change that will result in giving the DOD greater funding flexibility. The amendment establishes a transfer account for hazardous waste cleanup wherein it will be prohibited to transfer funds out of this account for other kinds of uses.

Mr. President, this does not create additional funding. The Department of Defense through the same process will determine what its needs are. But the accounting change is important because it resolves the inherent conflict within the Department of Defense that I think was not intended but one that has pitted national security requirements against environmental needs and it will be a surprise to no one that conflict has ordinarily been resolved in favor of national security. That would be all for the good, Mr. President, except, as I say, I think the conflict was unintended and it is unnecessary.

The answer to this inherent conflict is to separate these functions. The two functions should be separated from each other so that one will not be consistently in competition with the other for these scarce dollars, and that is exactly what the establishment of an environmental restoration transfer account does as provided in this amendment.

The second change is to provide that the amendment will exempt hazardous waste cleanup projects from the existing requirements in the law to secure a line-item military construction authorization.

The reason for this, as my colleagues know, is that any military construction project costing in excess of $1 million requires a specific line-item authorization in the military construction authorization bill that we enact each year.

The problem with this approach to hazardous waste cleanup projects costing as much as $350 million—and one example is the Rocky Mountain Arsenal—is the average time to take proposed military construction from the drawing board to the President's desk for signature runs from 3 to 5 years. While this kind of deliberation may be appropriate for regular military construction projects which are for MILCON dollars, it represents an unwise and unnecessary delay when we are talking about the immediate need to clean up toxic waste at military bases.

So, my amendment makes an exception for hazardous waste cleanup projects and allows the Secretary to obligate funds from the environmental transfer account which is virtually a trust account under this amendment for construction projects without prior congressional authorization. Provision is made in the amendment for a 21-day notice period before the appropriate committees of Congress when the Secretary decides to obligate moneys that would otherwise require military construction authorization.

Mr. President, I think these two changes will achieve a desirable expediting of the kind of efforts that many base commanders are trying to make.

I visited four installations in California this summer that are on the national priority list, which my colleagues understand is an indication that they are among the most serious offenders.

This amendment is targeted exclusively to the Defense Department for two reasons:

First, the DOD sites comprise the vast preponderance of Federal facility sites that will require cleanup, and, second, the kind of funding restrictions that we find attached to the MILCON process within the DOD budget does not generally apply to other departments, such as the Department of Energy and Department of Interior.

Mr. President, I commend this amendment to my colleagues for its adoption, and I am aware of no opposition. I think that it is the result of the kind of complaints that I was getting from base commanders this summer who were trying as best they could to deal with the existing constraints in the law. I think those constraints should be removed. They are serving no interests.

Mr. STAFFORD. Mr. President, we have examined the amendment offered by the able Senator from California [Mr. WILSON], and we believe it will improve the overall bill, and we are, therefore, prepared to accept it.

Mr. BENTSEN. Mr. President, in examining for the minority on this committee, it is the opinion of the Senator from Texas that this improves the procedure for the cleanup of sites of the Defense Department and we are happy to support it.

The PRESIDING OFFICER. If there be no further comments, the question is on agreeing to the amendment of the Senator from California.

The amendment (No. 684) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILSON. Mr. President, I only express my gratitude to the distinguished manager and the distinguished ranking minority member and the staffs for the very extraordinary degree of cooperation. They were of enormous assistance to us in achieving this purpose.

Mr. STAFFORD. Mr. President, I thank the distinguished Senator for his kind words.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 686

Mr. HELMS. Mr. President, I send an amendment to the desk and ask that it be stated. I suggest the clerk read it all.

Mr. STAFFORD. Mr. Presidnt, will the able Senator from North Carolinia be willing to forego for a short amendment by the Senator from Pennsylvania that will not be opposed?

Mr. HELMS. Absolutely. I will be delighted to do so.

Mr. STAFFORD. I thank the Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent that my amendment be laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from North Carolina for yielding.

AMENDMENT NO. 685

Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 685.

Mr. SPECTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. . Section 301 of CERCLA is amended by adding the following new subsections:

( ) The Administrator of the Environmental Protection Agency and the Attorney General shall submit to Congress annually on the first day of January a report including:

(1) The rules, guidelines, criteria and procedures used to determine which potentially responsible parties to include as defendants in a judicial or administrative enforcement action under this Act;

(2) The rules, guidelines, criteria, and procedures used to develop facts and information regarding potentially responsible parties at priority sites and to provide such information to potentially responsible parties in order to assist the settlement process;

(3) The rules, guidelines, criteria and procedures used to determine whether, to what extent, and on what basis to use Fund resources for removal or remedial actions in connection with a settlement or voluntary cleanup.

Mr. SPECTER. Mr. President, during the past few days, the Senate has considered one of the most important bills during my term in the Senate, the Superfund Improvement Act of 1985. This legislation addresses a critical issue in my home State of Pennsylvania and the Nation as a whole: how to speed up and improve the Federal program dedicated to cleaning up the many sites which are contaminated with hazardous substances and toxic chemicals. I have personally viewed sites which present immediate threats to our health and safety and can attest to how vital this program is to our country.

Earlier this year, I requested hearings on Superfund before the Judiciary Committee because of my concern that the Superfund Program operate fairly and efficiently in order to carry out its mandate to clean up the environment with all possible speed. These hearings set out many issues and provided the committee important viewpoints and information.

Based upon our hearings and my experience in litigation in the Federal courts, it is my conclusion that defendants under Superfund should have a right of contribution to bring in additional defendants so that all parties may be before the court at the same time to determine issues of liability and damages with the appropriate determination as to contribution and/or indemnification. These private party actions would encourage additional parties to come forward and expedite settlement discussions with the Government. Following these hearings, I introduced a bill, S. 1561, the Superfund Fair Contribution Act, which permits the timing and procedure for such contribution claims to be governed by the sound discretion of the court. My bill is designed to resolve possible constitutional challenges to Superfund, and, as such, expedite cases and speed up clean up.

I am pleased that the concept of my bill has been included in an amendment which has been offered by the distinguished chairman of the Judiciary Committee. In addition to this change, I believe two further improvements are necessary so that Superfund operates fairly and effectively.

First, during earlier consideration of Superfund, I offered an amendment that provides that the liability of all parties to Superfund cases, including third-party defendants, shall be determined according to principles of equity. This will insure that all parties have incentive to come to the bargaining table and settle cases quickly. By encouraging settlement, this important reform will expedite environmental cleanup through the voluntary participation of all interested parties. This amendment has the support of many parties, including environmental and industry groups. I am pleased that it was accepted without opposition.

Today, I am offering a second amendment which would require the Environmental Protection Agency and the Department of Justice to submit an annual report to Congress concerning various aspects of their policies regarding the enforcement of Superfund. In the past, there have been various concerns that the EPA has not effectively enforced Superfund. Although I have faith that the law will be fairly and properly enforced under the current Administrator, the leadership of Government agencies changes and it is possible that the law will not be properly enforced in the future. In order to ensure against the disastrous consequences that could occur, my amendment would require a report which would enable Congress to effect proper oversight over administrative action. This concept also has the endorsement of many parties, including environmental and industry groups. I urge its support.

Mr. President, it is likely that during the next few days we will enact legislation which will increase the size of Superfund manifold, broadening its funding base and strengthening its enforcement mechanisms. This reflects our continued commitment to the protection of the health and welfare of the people of our country. Superfund will also specifically cover naturally occurring toxic health situations, such as radon, which threatens many people in Pennsylvania and other States.

Mr. President, I believe that the duty of this body to enact the strongest possible Superfund bill is very clear. By adopting the fine work of the Environment and Public Works, Finance, and Judiciary Committees with this amendment, I believe that we will achieve an historic accomplishment in environmental protection.

Mr. President, this amendment calls for reporting from the Department of Justice and the Environmental Protection Agency so there may be a clear statement before all segments of the public, private sector and Government, as to what standards are being used by EPA and the Department of Justice for the enforcement.

This amendment has been discussed with the distinguished chairman of the committee and I believe cleared with the ranking member.

Mr. STAFFORD. Mr. President, I am pleased to accept the Senator's amendment for this side. I believe that the accumulation of information on the administration's settlement and enforcement policies will be of assistance to the Congress and the public.

I would also like to take this opportunity to comment on an amendment offered by Senator SPECTER which was accepted on Friday. Because of other demands, I did not have the opportunity, as floor manager, and principal sponsor of amendment 663, to comment on amendment 664 at the time of its acceptance.

It was and is my understanding that the amendment is solely to correct a difficulty which some third-party plaintiffs are encountering in obtaining joinder of third-party defendants in claims for contribution under CERCLA. The amendment does not diminish the liability of any person under CERCLA nor does it suggest that anything other than the standard of liability which has been held by the courts to apply, continue to be applied. Indeed, as originally drafted, the Senator's amendment contained the word "apportion" for which we agreed to substitute "allocate" in order to avoid any possible confusion on this point.

Also, Mr. President, the amendment was first circulated only hours before its acceptance. Therefore, despite the changes which we made, it is possible that we may discover other difficulties which necessitate further change or, although I would avoid this, its deletion.

Having said that, Mr. President, let me hasten to add that I agree with the fundamental purpose of the amendment, which is to assure that as among themselves, the defendants in a Superfund suit should be able to enforce their rights of contribution.

Mr. SPECTER. The amendment introduced and passed on Friday, adds to the contribution provision a sentence which provides explicitly for equitable allocation of response costs by the court. The defendants in the original action will have to demonstrate that each of the third parties in the contribution action is a liable party under the same elements of section 107. An allocation of response costs will be an equitable matter for the court and establishing each third-party defendant's share of response costs will not be a required element of proof to establish liability for contribution. This amendment does not in any way alter the standard of liability under section 107. By encouraging settlement, this important reform will expedite environmental cleanup while protecting critical due process rights.

Mr. STAFFORD. Mr. President, we have examined the amendment offered by the able Senator from Pennsylvania and we believe it to be a suitable addition to the legislation we are considering and we are prepared on this side to accept it.

Mr. SPECTER. Mr. President, I thank the distinguished chairman for his courtesy and I thank the staff for their assistance.

I think this will be a useful amendment. I very much appreciate the courtesies of the chairman.

The PRESIDING OFFICER. Is there further discussion on the amendment of the Senator from Pennsylvania?

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment (No. 685) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPECTER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 686

(Purpose: To express the sense of the Senate in opposition to a value-added tax)

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from North Carolina.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself, Mr. MCCLURE, Mr. LEVIN, and Mr. PROXMIRE, proposes an amendment numbered 686.

At the end thereof, add the following:

The Value Added Tax is a regressive tax which places the burden of paying for pollution on persons other than those responsible for it;

The Value Added Tax on S. 51 represents a dangerous shift toward the principle of a broad-based tax on sales;

The Value Added Tax has escalated rapidly in virtually every country in which it has been implemented;

The administration has stated, in a September 16, 1985, Statement of Administration Policy the "(t)he President's senior advisors will recommend disapproval of any legislation containing a value-added or other broad-based tax";

The House of Representatives is expected to adopt a financing mechanism for the Superfund bill which will not include the Value Added Tax;

The Administration will not be prepared to release its alternative to the Value Added Tax until after the Senate has completed action on the Superfund legislation;

Prolonged debate on the floor of the Senate concerning an alternative to the Value Added Tax would unduly delay consideration of this legislation: Now, therefore, be it

The Sense of the Senate that the committee on conference on S. 51 or such other comparable Superfund reauthorization legislation as shall be approved by both House of Congress should report legislation containing a reliable financing mechanism for the Superfund program which does not include the Value Added Tax.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I believe the amendment, as read by the clerk, states the case. I do not propose to take up the time of the Senate. Every Senator is familiar with the value-added tax. I am perfectly willing to go immediately to a vote on it.

Mr. President, under current law the Superfund Program is funded by a petroleum tax, a chemical feedstock tax and general revenues. S. 51 reauthorizes the petroleum tax and the feedstock tax but creates a new manufacturer's environment excise tax [MEET].

The MEET tax is a value-added tax of 0.08 percent on the sale or lease (in connection with a trade or business) of tangible personal property in the United States by the manufacturer. The tax is also imposed on the import of tangible personal property. Small manufacturers, those with less than $5 million of taxable receipts, and small import shipments, those under $10,000 would be exempt from the tax.

Mr. President, I object to this MEET tax for a number of reasons. First, it is, plain and simple, a new tax. The Reagan administration has opposed any tax increases and threatens a veto of the Superfund reauthorization bill if it contains this funding mechanism.

Second, Mr. President, the tax is a hidden tax. If enacted there would be a powerful incentive to substantially increase the tax, as has been the case in every other country except Norway which has imposed a VAT. Since its creation, Britain has increased their VAT by 50 percent, Austria by 18 percent, Denmark by 112 percent and Sweden by 112 percent.

Mr. President, here in the United States, one needs only to look at the history of our other two Federal revenue sources, Social Security and Federal income tax, to realize that the United States will follow the same course. In 1937, the U.S. Government imposed on the American taxpayer an average tax of $79. In 1983, the American taxpayer paid an average tax of $3,536, an increase of more than 4,475 percent.

Mr. President, the Social Security tax has ballooned as well. In 1937, the American wage earner paid about 1 percent on the first $3,000 of their wages to Social Security, a maximum of $30 paid. In 1983, the wage earner paid about 6.7 percent on the first $35,700 of his income to Social Security, a maximum tax of $2,391.

Third, Mr. President, at a time when we are talking about reducing Federal spending we should not be creating an open-ended Federal revenue source for a Federal program. A MEET tax can raise indeterminable amounts of money and would only insure the funneling of billions of dollars into the Superfund Program for years to come.

Fourth, Mr. President, by spreading the tax to all manufacturers, we are losing the link between those who create the hazardous waste and those who pay for it. By imposing the MEET we are creating a disincentive to clean up or to prevent hazardous waste.

Mr. President, I oppose the manufacturer's environment excise tax. It is an unwise step for this Congress to take and I hope my colleagues will join me in opposing the MEET tax by voting in favor of this amendment.

Mr. LEVIN. Mr. President, I ask unanimous consent to be added as a cosponsor of the amendment of the Senator from North Carolina, if I am not already listed as a cosponsor.

Mr. HELMS. If the Senator will yield, he is a cosponsor, as is Senator McClure and also Senator Proxmire.

Mr. LEVIN. Mr. President, let me tell my friends, the managers of the bill, that I intended to offer an alternative tax, at least some sense of the Senate fashion to the value-added tax. I am not going to do that now, given the hour. Many of us have to leave here and I know the committee is anxious to resolve this matter today, if possible. So I will not be offering my amendment. Rather, I am happy to cosponsor the amendment of my friend from North Carolina. It does express the sense of the Senate that we look for alternatives to a very complicated and regressive tax.

I would point out that such alternatives could include an effective corporate minimum tax so that we would finally get to the literally tens of thousands of profitable corporations that now pay no taxes on those profits. I have talked to my friend from North Carolina. I know that he would agree that such consideration could include an effective minimum corporate tax. Is that an accurate statement; that it could include, but it is not at all limited to that, nor need it necessarily include such a tax?

Mr. HELMS. The Senator is correct. That would be up to the Finance Committee and/or the conference. But the Senator is correct.

Mr. LEVIN. I thank the Senator.

Mr. President, during the debate on Superfund, many Members have expressed great concern about the value-added-tax as the mechanism for financing the Superfund. I share the concerns that the VAT is a complex, regressive tax. I also am concerned that using the VAT to finance Superfund is a foot in the door for a broad-based VAT in the future. It is enough to say that I believe the VAT is a complicated and regressive tax.

Because I sensed that some people would acquiesce in there being a VAT because they feel it would be fiscally irresponsible to pass a $7.5-billion spending program with no way to finance it, I am supporting an amendment expressing the sense of the Senate that the conferees on the Superfund bill come up with an alternative to the VAT as a means of financing Superfund. As the sponsor of the amendment, Senator Helms has indicated the alternative to VAT could include a corporate minimum tax. It is my strong preference that the VAT be financed by such a minimum tax.

It is essential to come up with a funding mechanism if we are to be fiscally responsible and if we are to enable the Superfund to get on with the urgent job of cleaning up hazardous waste sites. I agree with the chairman of the Finance Committee that financing the Superfund out of current revenues when we are running $200 billion deficits fiscally irresponsible. Strengthening the corporate minimum tax would provide the new revenues to finance the Superfund, can do that.

For example, the Congressional Budget Office has included in its 1985 publication of "Spending and Revenue Options" a proposal for strengthening the corporate minimum tax which would raise $31.2 billion from 1986 through 1990. This proposal as outlined is very similar to the one proposed by the administration in its fiscal 1983 budget request to the Congress. Let me make clear, this amendment does not require that the conferees adopt this CBO option. But the CBO option makes clear that a strengthened corporate minimum tax has the clear potential for financing the Superfund Program.

This amendment does not presume to set out specific language and provisions for a strengthened corporate minimum tax. It does not presume to determine how the tax will be fashioned and exactly how much it will raise. At the same time, however, its passage would send the clear message to the committee that the Senate wants to look to alternative ways to finance the Superfund, the remarks of the sponsor make clear that one such alternative is a minimum tax on corporations.

The President in his fiscal year 1983 budget request called for a strengthened corporate minimum tax along the lines I am suggesting today. In addition, we hear the President almost every day call for greater fairness in the Tax Code. We hear almost every day of his abhorrence of taxpayers who use provisions of the Tax Code to avoid paying their fair share. In fact, his current tax simplification plan includes in it a strengthening of the corporate minimum tax. Let me quickly note, however, that his current proposal would raise less than $3 billion during the next 5 years. What this means is that the President's most recent proposal has not preempted the revenue raising potential of a strengthened corporate minimum tax, and that such a tax could finance the Superfund without endangering the revenue neutrality of the President's tax simplification plan.

And as for the support of the American people, is there anyone in this Senate who seriously doubts that the American public would support cleaning up hazardous waste sites with the money raised by taxing profitable corporations which are now paying little or nothing in taxes? We have all received mail from constituents who think it is a disgrace that from 1981 to 1984, 50 corporations earning $58 billion, yes billion, in profits paid no tax, and in fact got $2.4 billion in refunds. And it is a disgrace. This amendment would express the sense of the Senate that we should finance the Superfund other than by a VAT, and the alternative of the minimum corporate tax would improve the equity in the Tax Code.

In conclusion, this amendment could open the way to financing the Superfund, and to making the Tax Code more equitable. Not a bad day's work. I urge my colleagues to support this amendment.

Mr. BENTSEN. Mr. President, I would like to comment briefly on the amendment of the Senator from North Carolina.

The Superfund excise tax is not a value added tax and was not intended to resemble that kind of tax. On the contrary, it is very limited in scope: it applies only to manufactured products; it does not apply to services. It does not apply to retailers, it does not apply to distributors. There are a total of only 30,000 taxpayers subject to this tax. If this were a value added tax, there would be millions of taxpayers, as the Treasury Department determined in its study of value added taxes last year.

The service exception is particularly significant. This tax does not apply to banks, insurance companies, construction companies or any other such industries. Any normal value added tax would apply to all those industries.

Furthermore, it does not apply to any small companies. It is nothing more than an excise tax applicable to manufacturing companies that do more than $5 million of business each year. It bears a direct relationship to the Superfund Program, is earmarked to it, and is the best of the available choices for funding the program.

In my judgment, Mr. President, it is unwarranted to term the Superfund excise tax a value added tax. And this is especially true if a better alternative than the Superfund excise tax is not offered.

Mr. HELMS. Mr. President, I have discussed this with the distinguished managers of the bill. They indicate that they are willing to accept the amendment.

With that in mind, I ask unanimous consent that the yeas and nays on the amendment be vitiated.

The PRESIDING OFFICER. Is there objection to the vitiation of the yeas and nays? Hearing none, it is so ordered.

The question is on agreeing to the amendment offered by the Senator from North Carolina [Mr. HELMS].

The amendment (No. 686) was agreed to.

Mr. HELMS. I thank the Chair very much. I yield the floor.

AMENDMENT NO. 687

(Purpose: To exempt any owner or operator from liability for a release which occurred prior to his becoming such owner or operator)

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 687.

At the end of title I add the following new section:

LIABILITY OF NEW OWNER OR OPERATOR

SEC. . (a) Section 107(a) of the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof (after and below subparagraph (C)) the following:

"Any person who becomes the owner or operator of a facility on or after October 1, 1985, shall not be liable under this section with respect to any release at such facility which occurred prior to the date on which he became such owner or operator of such facility.".

Mr. SYMMS. Mr. President, this amendment is a very simple amendment and I believe it is important. In fact, it is extremely important in the State of Idaho. We have two sites, that affect literally 2,000 or 3,000 people in the State of Idaho. I think they could be put back to work if this amendment is accepted.

The amendment amends section 107 by adding a subparagraph. I will restate it again so my colleagues understand what we are trying to do here.

> Any person who becomes the owner or operator of a facility on or after October 1, 1985, shall not be liable under this section with respect to any release at such facility which occurred prior to the date on which he became such owner or operator of such facility.

Now, the intent is to allow the sale of a property without encumbering a new owner with liability for environmental problems that occurred long before the prospective purchaser arrived on the scene. I mentioned Bunker Hill Ltd. which is located in Kellogg, ID. Mr. President, one gentleman was quoted recently in the press as saying that they were going to litigate and sue people all the way back to Noah Kellogg. Well, Noah Kellogg happens to be the person who was leading his mule through the Silver Valley and the mule kicked over a rock and, lo and behold, it turned out to be galena ore. Since that date in 1880, they have mined 1 billion ounces of silver out of Silver Valley in Idaho. In fact, if you took those in silver dollars and laid them side by side, a billion of them would go clear around the world.

So it has been quite a discovery, but a long time has passed since then. With all of the prospective litigation, they simply cannot get anyone to come in now and reopen some of those mines that were operating before the turn of the century for many years. A lot of those mines have closed now. However, due to new mining techniques, increasing productivity, and other factors, some of these mines could be reopened. There are two specific ones that could be opened in Idaho right now which could amount to employment in the neighborhood of about 3,000 people. However, no prudent operator is apt to attempt to restart a property when there is a potential liability that stretches clear back to Noah Kellogg.

So we are in a kind of a catch-22 situation. Consequently, the mines that could be operating, providing jobs, generating wealth, and, in some cases, reducing our dependence on foreign suppliers for strategic minerals, will not be reopened. This amendment would simply let a new operator start with a clean slate. He would be responsible for his acts and not for those of his predecessors. This seems fair and reasonable to me.

It is not an attempt to shield anyone from the cost of environmental damage for which they are responsible. In fact, instead, it is an attempt to allow our economy to grown and prosper in a normal manner. It is not a bailout for the polluters. Indeed, it should be significant aid for environmental cleanup efforts.

Quite clearly, the seller and purchaser would have to agree on the status of the property at the time of the sale. This surely would include the amount of environmental cleanup anticipated and the responsibility for funding that effort. That appears to be the natural time for the EPA to negotiate with the other parties over the cleanup costs and responsibility.

Now, I am not an attorney, Mr. President, but it seems to me, as a layman, that this amendment should reduce transaction costs, which we discussed at great length last week; litigation costs which amount to 50 percent of all this money that is involved in Superfund, I might add. We spent $1.6 billion thus far with that program and only cleaned up six sites, and about half of that money has gone for the transaction costs, which means having law firms sue other law firms and have very high legal bills pile up and very little actual engineering work take place to clean up the toxic wastes, which is the purpose of the bill.

Actually, I believe that this amendment would simplify the process and make it simply. I have been warned that this amendment cannot pass. I am afraid that there is a great deal of opposition to it. It has been pointed out to me that it provides opportunities for the establishment of shell corporations sham sales, and so forth. In the specific cases that I am aware of in my State, I have been assured that this is not the case. The people that own the property today are willing to stand firm on the liability, but they say they can bring in new investors if this can take place. I made the point before that at any time our Government begins to spend some money in the billions, the chance of waste, inefficiency, and corruption always exists, but I do not see this amendment increasing any problems with respect to the bill. The only thing it might do is make things happen a little faster in terms of cleanups. Fictitious bankruptcies seem to be a major concern. Obviously, if a firm is truly bankrupt, collection for Superfund cleanup will be impossible anyway. It seems to me that we must have the legal and accounting resources to thwart efforts like this. I have dwelt the effect of this amendment on mining properties because they are of major and obvious concern in my State, and to the jobs of people that live in my State. Unquestion other industries can also benefit from this amendment. With economic conditions the way they are in this country, with the trade problems we have, I think we should be very careful not to put unnecessary roadbacks in front of maintaining and creating jobs. I hope the committee will look favorably on this amendment. I have been told that they will not.

I yield the floor.

Mr. **STAFFORD** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from Vermont.

Mr. **STAFFORD**. Mr. President, I have to rise in opposition to this amendment. I wish our committee might have a chance to examine it, I will say to my friend who is a very valuable member of the committee. This is a new idea. In my judgment it would in effect terminate the normal practice of passing on liabilities of a landowner on to the next owner. It appears to me it would, as it is now drawn, I would say, seriously cripple the entire Superfund Program and liabilities thereunder. It might as a matter of fact even have a significant impact upon the laws of our 50 States with respect to the passing of my bill as it runs from one landowner to another. So I think it would set so dangerous a precedent for us, for the Senate, for the Nation, in its present form and without examination in our committee that I would have to oppose it. I hope my friend will consider not passing it to a vote tonight, but allowing us to consider it in the committee, which I would assure my friend we will reach at an early time.

Mr. **BENTSEN** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from Texas.

Mr. **BENTSEN**. I join with my chairman saying this is not the way you normally buy a company. If you go out and buy a company, you look at the risks that are involved in the purchase and you look at all of those liabilities. Maybe you ask for some indemnification from the previous owner before you go ahead and consummate the deal. You take away that incentive by this proposal in taking this kind of an approach. It concerns me, frankly. I have to oppose it. It is a new idea. I can understand some of the things the Senator is trying to achieve. I would certainly support the chairman in his desire that we have hearings, explore the idea, and see what the full ramifications of it happen to be.

Mr. **SYMMS** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from Idaho.

Mr. **SYMMS**. Mr. President, I have the highest respect for the chairman and the distinguished Senator from Texas. I know they have had long experience in this field, and the Senator from Texas certainly has had a lot of personal experience in business. I do respect that. I think I can see we cannot pass this amendment at this point. It is a great frustration to me to have people come to my office, contact me, say they would like to purchase properties in my State, and show me where they have the money put together and where we might be able to keep some jobs. But I think under the circumstances, we must hear this out on this question of liability, which we still have not answered fully. How we are going to handle the liability question? It is not just related to Superfund, but I think liability is becoming a problem that reaches into every aspect of the commercial and business enterprise in this country. It is becoming an astronomically high cost. I would ask now to take my amendment down. We will discuss it on another day at the committee. So I ask unanimous consent to pull the amendment down.

The **PRESIDING OFFICER**. The Senator is entitled to withdraw his amendment.

Mr. **STAFFORD**. Mr. President, I want to thank the Senator from Idaho for his cooperation. Mr. President, I know of no further amendments to title I of the bill.

Mr. **BENTSEN**. Mr. President, let me say that I, too, want to thank the Senator from Idaho. We worked on a lot of issues together productively, I think. I will look forward to doing more in the future, and will be delighted to explore this with the Senator.

I say to the distinguished chairman of the committee that I know of no further amendments on this side.

Mr. **HUMPHREY**. Mr. President, today the Senate completes action on legislation extending the Superfund Program—a program which is at the very heart of our national effort to protect the public health and the environment. Today's action is significant if only for the fact that it comes just days before the authority to tax under the comprehensive Environmental Response, Compensation, and Liability Act of 1980. On September 30, fund financed clean up of hazardous waste must stop, and facing dwindling resources, the U.S. Environment Protection Agency [EPA] has stopped funding all but emergency clean up actions. Clearly, too much is at risk to let this program lapse.

In 1980, when I joined my colleagues in support of the original Superfund legislation, I believe this Congress sent an important message to the people of this Nation. The problem posed by uncontrolled hazardous wastes were recognized as enormous. The potential threat to public health and the environment called for an unwavering commitment on the part of the Government to take extraordinary action. Over the past 5 years, we have learned a lot about hazardous wastes, the means to control and dispose of them properly, the effects on health and the environment and the scope of the problem. The legislation which is before the Senate today builds upon what we have learned and recognizes that we still have far to go in completely addressing the problems which we face.

My personal involvement in Superfund stems from my participation in the reauthorization process before the Committee on Environment and Public Works—a process which really began over 18 months ago. Before that, however, I had extensive firsthand involvement with Superfund. I have personally visited almost every one of the 13 sites in New Hampshire which are listed on the Superfund national priorities list. Over the course of these visits I have seen up close just how devastating it is to the people of a neighborhood or community to discover that their home backyard is next to one of these awful sites. People look to those of us in public office to take effective action to address these tough problems. In the State of New Hampshire, we have been able to make some progress. For example, I was pleased to help facilitate the first-in-the-Nation cooperative agreement between the State of New Hampshire and the EPA for cleanup work at the Sylvester site on Gilson Road in Nashua. We have also made good progress at many of the other sites in our State.

But more needs to be done, both in New Hampshire and across the Nation. One of the most important things we have begun to understand over the course of the past several years is the extent of the problem which we are facing. When Superfund was first enacted 5 years ago, we did not have many good, firm estimates of the total extent of the problem or many good, firm estimates of hazardous wastesites that might require cleanup. The national priorities list now stands at well above 800 final and proposed sites. EPA has told us that it will ultimately list between 1,500 and 2,000 of the 20,000 identified sites to the NPL. Other surveys have suggested that the problem is far larger. Notably, the Office of Technology Assessment has suggested that eventually there could be as many as 10,000 Superfund sites.

The bill before us recognizes our increased understanding of the size of the problem and proposes to allocate resources to more adequately address the problem—$7.5 billion represents a substantial increase in the size of the program. I am not convinced that this will be enough, and I expect to carefully watch the progress of the Superfund Program over the course of the next couple of years to ensure that what we are allocating to the program is enough to do the job quickly and effectively. A key issue involved here, of course, is the means by which we propose to finance our improved and expanded Superfund. The tax plan which was added to S. 51 by the Committee on Finance is one which causes this Senator considerable concern. I am appreciative of the very considerable constraints which the committee faced when they wrote this title of the bill. First, they were charged with raising a significant amount of revenue in an atmosphere that clearly was not inclined toward using general revenues. Further, it was generally agreed that the present feedstock tax could not be expanded significantly without further comprising some important industries' standing relative to international competition. And, there were the uncertain proposals regarding the various waste-end tax schemes.

However compelling these problems may be, it is by no means clear that a broad based excise tax is a considerably more attractive alternative. Indeed, experience with this kind of a tax elsewhere has revealed some very fundamental problems. While this Senator is not prepared to offer an alternative at this time, I am not convinced that there does not remain substantial room to identify workable alternatives.

Mr. President, the bill before the Senate proposes a number of very important changes to the way the Superfund Program operates. I was particularly pleased that the committee saw fit to include in this year's version of the bill, three provisions which I inserted during the course of consideration of Superfund legislation during the 98th Congress. First, there are expanded health effects studies authorities in the bill. I stress these provisions because the protection of human health is the highest and ultimate goal of the Nation's environmental protection laws. Health effects data and information underlie all response actions taken under the Superfund law, as well as most actions taken under other environmental laws. One part of this section requires that health assessments be conducted at every Superfund site, followed by more complete studies where that is appropriate. Conducting health assessments and studies of populations exposed to releases of hazardous substances from sites and facilities will not only enhance response to immediate health concerns, but will also build a comprehensive body of data that will define the threat that toxic chemicals pose to human health.

S. 51 also assures the opportunity for public participation in the selection of cleanup actions at Superfund sites. Allowing the public to comment on, and participate in the selection of, responses to Superfund sites will engender public confidence and ultimately save both resources and time.

Finally, there is a provision to expand the current Federal-State cooperative efforts by allowing multisite cooperative agreements.

Incorporated in this bill are several other provisions which I believe will represent major improvements to the present Superfund Program, and which I was pleased to support.

Mr. President, this bill is a good one, and is a testament to the strong leadership that is provided by the distinghished chairman of the Environment and Public Works Committee, which I am pleased to serve on. I commend Senator STAFFORD as well as the ranking member, Senator BENTSEN, for their patience and diligence in guiding this important piece of legislation through what has been a complicated, lengthy, and often tiresome process.

● Mr. BAUCUS. Mr. President, the Comprehensive Environmental Response Compensation and Liability Act or Superfund was enacted in 1980 in response to the need for the Government to act quickly to clean up pollution caused by toxic substances.

It was enacted in the wake of Love Canal, with the recognition that we had ignored toxic waste disposal for too long, and with the hope that future Love Canals could be avoided.

For too long, ill-conceived toxic waste disposal practices were allowed to continue threatening the public health and polluting the environment.

The 1980 law was the first systematic attempt to prevent further public health issues.

As EPA began to seriously address the problems of past hazardous waste disposal practices, the size and scope of the program grew.

Hazardous wastes were found in unexpected places. Montana, for example, with its vast open spaces and small population size has eight sites listed on the national priority list for cleanup.

The entire Clark Fork River from its headwaters at Silver Bow Creek all the way to the Milltown Dam outside of Missoula, a distance of over 80 miles had been damaged by past mining activities.

While the popular notion is that toxic waste is found only in industrial States, we in Montana found out differently. We discovered that mining our gold, silver, copper and other minerals left a legacy just as deadly as the most heavily polluting industrial plant.

In the next national priority list update, still more sites will be identified. Nationwide, the list could grow to over 12,000 sites.

Failure to respond to these toxic waste threats will endanger the future of our children.

SUMMARY OF S. 51

The legislation addresses both the scope of Superfund and its funding.

S. 51 makes a number of positive improvements in the Superfund.

The bill responsibly raises the revenue necessary to fund cleanup. The feedstock tax on petroleum and chemical feedstocks is continued at its current level of $1.5 billion. This tax on 42 feedstock chemicals will continue to penalize those most who manufacture most of the building blocks of chemical wastes.

The bill then calls for a new tax on manufacturers to raise $5.4 billion over 5 years.

This new excise tax recognizes the widespread benefits of modern technology while keeping the tax rate low enough that no manufacturing sector would bear an unfair share of the burden.

The program will be financed in a way that it stands alone. It will not exacerbate the Federal budget deficit problem facing this country. Funding for the program comes totally from the feedstock tax or the manufacturers excise tax.

S. 51 also strengthens Superfund in several ways.

For the first time, citizens will have the right to enforce cleanup. Penalties are increased. A schedule for cleanup at Federal facilities is established, and cleanup standards—to insure protection of human health and the environment—is mandated.

EPA will need to consider both long-term as well as short-term cleanup costs in choosing an alternative. EPA will need to determine the health effects of exposure to chemical contaminants.

As well as strengthening the legislation, a number of changes in the law are included to allow greater flexibility in meeting the objective of the law.

During consideration of Superfund in committee, I offered the amendment to allow for citizen suits. A number of concerns have been raised about this provision. It is my belief that those concerned are misdirected.

The citizen suit provision provides for participatory democracy.

People are affected by hazardous wastes and they should be able to participate at every step to see that these problems are being addressed.

There are those who argue that citizen access to the courts will distort cleanup priorities, waste Government and private resources that could be spent on cleanup, and clog the Federal courts.

To these critics, I say take a closer look at section 136 in S. 51. The citizen suit provision is a tightly drafted provision to help ensure that EPA and other agencies carry out their required duties under the Superfund law.

Striking this provision is a signal to EPA and the Federal Government that they can ignore what Congress enacts. Is this what we want? I do not think so.

Specifically, the citizen suit provision in S. 51 would allow any person to sue Federal agencies to force them to carry out mandatory provisions of CERCLA.

In other words, EPA could be sued if it failed to do an adequate job of cleaning up Superfund waste sites.

Let us take a look at what this means. Superfund is unlike most of our other environmental laws. Under these laws EPA is required to enforce standards, whether for water quality or air quality.

Superfund gives EPA the authority to respond to an emergency toxic chemical released into the air or into the water. It gives the Federal Government the tools to respond to a release of hazardous containment in the most appropriate manner to correct a public health problem.

This citizen suit provision recognizes the need to give EPA as much flexibility as possible in deciding how to respond to an emergency situation. It was specifically crafted to not hamper

EPA's discretionary actions.

Although unwilling to officially support the provision, the Justice Department has agreed that it will not add significantly to the types of citizen suits that can be brought against the Government. It will provide additional opportunities to sue polluters.

Explicit authority for citizen suits in CERCLA will streamline citizen litigation by removing any question that citizens can sue to force performance of mandatory duties imposed by CERCLA. This action is a laudible step.

The citizen suit provision will allow suits against any person alleged to be in violation of any requirement under the Superfund law, including requirements of the statute, or court or EPA orders.

Citizens under current law cannot bring suits to force corrections of violations.

This provision will assist EPA in doing its job. It will provide additional enforcement help.

But make no mistake, lawsuits would occur against polluters only in limited circumstances. Basically, only if a party failed to follow either an administrative or court order and EPA failed to follow up.

If EPA were diligently pursuing an action to enforce a requirement or impose a civil penalty for a violation, citizen suits would be prohibited. In other words, frivolous actions tying up EPA's scarce resources will not be allowed.

Citizen suit provisions have been an integral component of environmental legislation since the Environmental Protection Agency was created by Congress.

Citizen access to the courts is provided for in the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and the Noise Control Act. Every major piece of environmental legislation except Superfund contains such a provision.

The citizen suit provision in S. 51 is modeled on the citizen suit provisions of the Clean Air, Clean Water, and Solid Waste Disposal Acts. This provision builds on similar provisions in other Federal laws that are working.

In August 1983, then Administrator Bill Ruckelshaus asked the EPA Office of Policy, Planning and Evaluation to conduct a long run, integrated review of EPA's principal statutory authorities.

The Administrator stressed that since the conception of these laws, a great deal had been learned about how well EPA programs control pollution, about the relationship between pollution in different environmental media, and about the tradeoffs between environmental regulation and other values.

The purposes of this introspection was to review the experience of the Agency and to "assess afresh" whether the Agency's existing authorities provide the best approach to promoting health and environmental protection—or whether the agency can do better.

One of the first studies undertaken as part of this review was a study of citizen suit provisions. The purpose of this study was to review how these "private attorney's general" provision have actually worked. The Environmental Law Institute completed a citizen suit study for EPA in September 1984.

A major conclusion of this review was that the system of citizen enforcement is currently operating as Congress intended: first, to provide a prod and second an alternative to governmental enforcement. This study determined that since 1978, 349 citizen enforcement actions under the six major environmental laws were taken. Only 189 actions actually resulted in litigation.

The main complaints against citizen suit provisions are that they first, interfere with Government enforcement and second, focus on de minimis violations. The ELI study conducted for EPA did not substantiate either allegation.

The Federal enforcement officials interviewed for the ELI study expressed general support for citizen enforcement. EPA headquarters and regional enforcement staff interviewees said that a large protion of citizen notices addressed violations that either were worthy of agency action, but had escaped EPA attention, or, though not on EPA's priority list were appropriate subjects of enforcement actions. None of the governmental enforcement personnel interviewed reported a general tendency for citizen groups to puruse trivial violations.

Congress intended for citizen suits to act as an incentive for better agency enforcement. Citizen actions seem to be working well in this regard.

From 1981 through 1983, there was a general decline in the number of enforcement actions initiated by EPA.

In response to this decline, the number of citizen suits increased. EPA's enforcement activity began to increase in the spring of 1984. Although only a few of these cases have been settled, it appears the scope and effectiveness of the publicity generated by recent citizen enforcement seems likely to act as a general deterrant. In other words, they complement agency actions to meet environment goals.

It is both prudent and responsible public policy to extend citizen suit provisions to CERCLA. The mismanagement of the CERCLA Program during its initial years is legendary. The scope and extent of the hazardous waste cleanup problem facing the Nation continues to grow.

Citizen enforcement actions to prod hazardous waste cleanups can act as an important complement to EPA efforts.

Citizen suit provisions are working in our other environmental laws and they will work in Superfund.

Let me turn to the question of cleanup at Federal facilities. This provision will be the only mechanism anywhere in the entire statute to insure cleanup at federally owned facilities.

The administration contends it would be unconstitutional for EPA to sue other agencies to compel cleanups. Some of the worst sites in the entire country are federally owned. Very little is happening in regards to cleanup at the bulk of these sites.

Citizen suits may be the only way to get cleanup actions underway at these sites, if the responsible agency fails to act on its own.

There are those who say that a citizen suit provision is not needed because State common law or the Federal Resource Conservation and Recovery Act would meet the need for the provision in Superfund.

Both EPA and Justice argue that RCRA's definition of solid waste is broad enough that citizens could sue under RCRA to halt almost any "imminent and substantial endangerment" caused by a hazardous waste site.

RCRA allows citizen suits to halt endangerment caused by any substance that fits the general statutory definition of solid waste, including hazardous wastes listed by EPA.

But what about a hazard caused by a factory inadvertently emitting hazardous substances that may not be considered hazardous wastes under RCRA?

Do we want the courts to decide what is and is not a hazardous waste—changing the RCRA definition with each case?

Citizens should be able to defend themselves from dangerous chemicals regardless of whether EPA has formally listed them under a statute or not.

Turning to the allegation that State common law can fill this void—most State nuisance law is only available to injured landowners.

Further nuisance law is useful in obtaining monetary compensation for injury already suffered, but not in taking action before damage occurs. The citizen suit provision in S. 51 could be used to prevent health risks to people from exposure to toxics.

It would be very difficult and combersome to prove that a chemical had trespassed onto your property. State common land just isn't adequate.

Another objection raised over including a citizen suit proposal in Superfund is that it would affect EPA's cleanup priorities.

I ask, how are citizen suits supposed to cause this great disruption, siphoning all of EPA's attention onto each citizen suit?

Would EPA change its priorities? Setting priorities is clearly a discretionary action not subject to direct challenge.

In the case where a citizen can prove that a site is "threatening public health," then EPA should shift priorities to protect public health.

But let us look at the record. EPA will not devote all of its resources to citizen suits.

If past performance is any indication, and I believe it is, EPA most likely will not even intervene in citizen suits under Superfund.

The Environmental Law Institute study found that EPA had intervened in only 6 percent of the citizen suits against polluters under all of our other environmental statutes.

Clearly, not an undue burden on an agency that has had less than a pristine record on the environment under this administration.

Adding a citizen suit provision to Superfund will simply round out our environmental laws.

It will not place a strangehold on the ability of EPA to act.

Rather, it will complement EPA.

The $7.5 billion authorization level is necessary and reasonable. This level will increase the pace of cleanup. Those most responsible for the damage will pay more of the cleanup cost.

The Superfund amendments before us today are sound, fiscally responsible additions to the program. I recommend adoption of a strong Superfund Program to protect public health and provide for a clean and healthy environment.●

FEDERAL FACILITIES COMPLIANCE PROVISION

Mr. DOMENICI. Mr. President, I wonder if I might seek to clarify the intent of section 137 of this bill, the Federal facilities compliance provision, with the floor managers, Senators STAFFORD and BENTSEN, as well as with Senator HART, The author of this provision. As they will recall, we discussed the scope of this particular provision when it was considered by the committee during our markup of the bill. It was unclear to me at the time whether and, if so, to what extent this provision was intended to be triggered by the presence of radioactive materials at a Federal facility. Senator HART and I discussed the matter and agreed at the time of markup to have the staff explore the issue to determine whether there was any confusion that required clarification, either through legislative language or a colloquy. Could I ask the Senator from Colorado to clarify his understanding of whether the requirements of this provision are triggered by the presence of radioactive materials at a Federal facility?

Mr. HART. I appreciate the opportunity to clarify this matter, Mr. President, and I thank the Senator from New Mexico for his efforts to resolve any potential confusion. The requirements of new section 117, the Federal facilities compliance provision, as reported by the committee, are triggered only in those instances where a Federal agency is required to submit information under section 3016 of the Solid Waste Disposal Act. Thus, unless an agency is required, under the provisions of section 3016, to submit information about hazardous waste that is stored, treated, or disposed of at a site which is owned or operated or has been owned or operated by the Federal Government, the provisions of new section 117 are not intended to apply. In response to the Senator's specific questions about radioactive materials, Mr. President, it is my understanding that the definition of "solid waste" in the Solid Waste Disposal Act—the term that triggers the requirements of section 3016 of that act—specifically excludes all source, special nuclear, and byproduct material, as those terms are defined in the Atomic Energy Act of 1954, as amended. Accordingly, the provisions of new section 117 would not be triggered by the presence of source, special nuclear, or byproduct material at any Federal facility. By way of example, uranium mill tailings disposal sites, subject to the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, are covered by the definition of by product material, and the presence of uranium mill tailings at such sites will not bring these within the requirements of new section 117. Similarly, sites would not be included in section 117 on the basis of any other source, special nuclear, and byproduct materials because they are excluded from the provisions of the Solid Waste Disposal Act's definition of solid waste. That is my understanding of the scope of this provision, as it relates to radioactive materials.

Mr. STAFFORD. That interpretation is consistent with my understanding, as well. Mr. President, concerning the scope of this provision.

Mr. BENTSEN. I concur in that view, as well, Mr. President.

Mr. DOMENICI. I appreciate the clarification of all three Senators, Mr. President.

Mr. HART. I understand that section 120(d) which creates a new section 105(d) does not negate a State's capability to initiate an action pursuant to section 107 in fulfilling its responsibility as trustee for natural resources within its boundaries. Is that correct?

Mr. BAUCUS. Yes.

MILLTOWN DAM SITE

● Mr. BAUCUS. Mr. Chairman, in the State of Montana, we have a situation that is a cause for concern. The Montana Power Co., an investor-owned utility, operates the Milltown Dam and Reservoir, located east of the city of Missoula, MT, at the confluence of the Clark Fork and Blackfoot Rivers. Many years of mining activity upstream from the dam has caused wastes, such as arsenic, to be washed down the Clark Fork River and to be deposited in the reservoir behind the dam.

The area where the mining occurred—known as Silver Bow Creek—is presently listed on the national priority list for Superfund cleanup. Recently, EPA has agreed to investigate heavy metal contamination all along the Clark Fork River from the Silver Bow Creek site to Milltown Dam.

Because of the accumulation of heavy metal contaminants behind the dam, the first impoundment downstream of the mining area, the Milltown Reservoir is on the Superfund priority list.

While the Montana Power Co. is the owner or operator of the Milltown Dam, and therefore, technically the owner or operator of the facility under section 101(20) and 107, the company is not the owner or operator of the facility where the wastes were generated and initially released. Clearly, mining upstream of the Milltown site is the source of the pollutants or contaminants which have accumulated in the sediments that have collected in the reservoir behind Milltown Dam.

I inquire whether it was Congress' intent in section 107 to include as a principal responsible party, an owner or operator of a dam where hazardous substance, pollutant, or contaminant has been deposited or otherwise come to be located as a result of a release upstream of such hazardous substance, pollutant or contaminant?

● Mr. STAFFORD. In the particular case you cited, the owner or operator of this dam would probably satisfy the technical definition of "owner or operator" of a "facility" for purposes of liability. However, it is my belief that it was not Congress' intent to require that each and every party be held liable by the President, without any regard for how little it had to do with the release of the hazardous substance.

The President has the discretion to pursue such parties or not.

● Mr. BAUCUS. Other than owning the dam and the reservoir that have served to trap the metals, the Montana Power Co. has had no connection with the release of the metals; yet, the company has been preliminarily targeted as a potentially liable party under the Superfund statute.

The Montana Power Co. and its ratepayers feel that an imposition of liability would be unjust and contrary to the intent of Congress. Surely, the statute was not designed to hold liable a party, like the Montana Power Co., which had so little to do with the release of the hazardous substances. Surely, the definitions of facility and owner or operator under the statute do not include dams like Milltown or a party like the Montana Power Co.

● Mr. STAFFORD. Again, based upon the situation you have described, I would conclude that the Montana Power Co., under an equitable prosecutorial interpretation of the law by EPA might not be responsible for cleanup at this facility since it did not itself contribute to the release of the heavy metals. I would also conclude that the statutory defense under section 107(b)(3) would seem to apply under the facts as described. In general, under this part a party is not liable for the acts of a third party if it can establish bv a preponderance of the evidence that, first, it exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; second, it took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; and third, it has no contractual relationship with the third party.●

Mr. GARN. Last Wednesday, September 18, the Senate adopted an amendment offered by my colleague from Montana, Senator BAUCUS, one which I was happy to cosponsor. The essence of that amendment is to require the EPA to look before it leaps into adding mining sites to the Superfund national priorities list. One of the problems. S. 51 and the Baucus amendment addresses is the current practice of scoring mining sites under the Hazard Ranking System [HRS] based on very little data and a very limited understanding of potential threats posed by these sites. Such a situation occurred a few weeks ago at an abandoned mine site called "Prospector Square in Park City, UT. EPA charged forward and added Prospector Square to the Superfund list without thoroughly considering the merits of the site. Local officials in Park City are furious and rightfully so because they know the chances of the actual clean-up taking place in the near term are nil.

In my mind, section 120 and the Baucus amendment require that the HRS be revised to require additional information prior to listing mining sites, as follows: The new HRS must assure that the relative degree of risk posed by such sites is assessed; and pending these revisions, the EPA must make site-specific findings before listing special waste sites. These additional requirements will necessitate additional moneys for more thorough site assessments before listing in order to develop the necessary information to make site-specific findings and usefully compare sites.

I would like to ask the chairman of the Environment and Public Works Committee, Senator STAFFORD, if he agrees with this interpretation of the amendment?

Mr. STAFFORD. Yes, that is my understanding of the amendment's intent.

Mr. BAUCUS. If I might add, I agree that what the Senator from Utah has stated is certainly the intent of my amendment. We must make certain that EPA is using a sufficient data base before making decisions on listing specific sites. Mining wastes in particular because of their high volume and often low toxicity nature require consideration, otherwise, those sites posing a serious threat to health and the environment might not be distinguished from sites that are not causing problems. I would like to ask the Senator from Utah if he believes EPA has sufficient funding in order to conduct a thorough risk evaluation at individual sites?

Mr. GARN. Let me answer that question this way: As chairman of the Appropriations Subcommittee for EPA, yes, I believe there will be sufficient funding at EPA to carry out the necessary risk evaluation work at individual sites as envisioned in the Senator's amendment. It's a question of administrative priorities. EPA can actually save money by conducting a thorough risk evaluation before placing these sites on the national priorities list. Such action will assure that only those sites with real problems are placed on the list and not just every pothole in the road.

Mr. BAUCUS. I thank the Senator.

Mr. GARN. On another matter, if, at the conclusion of its special waste study, EPA decides not to list certain special waste streams and their constituents under section 3001 of the Solid Waste Disposal Act—and those waste streams or constituents are not characteristic wastes under section 3001—my understanding is that S. 51 and the Baucus amendment would still permit response to those waste streams or their constituents as pollutants or contaminants—as defined in the act—if they present significant risk to public health comparable to sites on the national priority list or on a site specific basis if the waste there qualifies as a hazardous waste and, hence, a hazardous substance under the law.

Mr. STAFFORD. I agree with that assessment entirely.

Mr. GARN. I understand further that the emergency and imminent and substantial endangerment response authorities of sections 104 and 106 are not affected by S. 51 and the Baucus amendment. Is that the Senator from Montana's understanding of his amendment?

Mr. BAUCUS. That is correct.

Mr. GARN. I thank the Senators from Montana and Vermont for their clarification of the intent of this very important amendment.

Mr. ARMSTRONG. Mr. President, I would like to say a few words about Superfund and the legislation before us now. As a member of the Finance Committee I have been involved with this issue for many months. I voted for the bill because of the clear necessity to provide the Environmental Protection Agency with the means to combat the dangers that exist in my State and others caused by abandoned hazardous waste sites. Congress puts a high priority on this matter and I hope to see the EPA act with similar commitment to make our land and water safe where they are threatened.

My concerns about this bill have centered around the funding mechanism to raise the $7.5 billion this legislation calls for. My views are well known on this as I was one of only two on the Finance Committee voting against the Superfund excise tax.

This new tax on manufacturers with receipts in excess of $5 million is not an appropriate funding mechanism for this dedicated trust fund. Although its proponents speak of the nexus between manufacturers and pollution it is by no means established. Remember Superfund is used to clean up abandoned hazardous waste sites. Manufacturers who produce hazardous waste are covered by other Federal laws [RCRA] controlling such activities. Funding needed to clean up abandoned sites should come from general revenues to which all of us have contributed; corporations and individuals alike.

The fact that exemptions exist, first for manufacturers with receipts under $5 million, and for specific industries and products sabotages the intent of the tax to broaden the responsibility. Such exemptions also cause inequities and economic distortions that are documented by the Canadian experience with such a levy.

In 1924 Canada became the first country in the world to adopt the single stage form of manufacturer's tax. Malcolm Gillis, writing in the January 1985 Canadian Tax Journal said "Canada is the last remaining industrial nation using this fiscal relic".

This is far from the only negative assessment of the tax. In 1966 the report of the Royal Commission on Taxation set out the distortions such a tax causes and in 1983 the report of the Federal sales tax review committee reiterated the problems with the manufacturer's tax. Primary among these criticisms, quoting Gillis are:

> That "* * * the manufacturer's tax is generally viewed as a nongeneral sales tax imposed at the point most distant from final consumption, at nonuniform rates and involving disparities in the relative tax treatment of domestic and imported goods * * * lack of neutrality in turn has given rise to discrimination against particular industrial and commercial sectors and against consumers of goods and services produced by them."

To expand on this the case has recently been made to me that high-tech industries stand to lose proportionately because they typically add more value to their products than the manufacturing segment does in producing their goods.

The Canadian experience with this tax illustrates its problems and makes clear that a manufacturer's excise tax does not even qualify as a true value-added tax because of its single stage nature. I might also add that the Canadian rate is 10 percent, well above that set out in this legislation but not unlikely in the future.

In closing, Mr. President, I would like to include in the Record the following letter that demonstrates the depth of concern about this Superfund excise tax. It comes from 94 corporations and associations that have taken the lead in combating this inappropriate new tax.

There being no objection, the letter was ordered to be printed in the Record, as follows:

September 13, 1985.

Hon. William L. Armstrong,
U.S. Senate, Washington, DC.

Dear Bill: Earlier this week more than 102 business organizations wrote to you opposing a value-added tax to finance the Superfund Program.

We understand S. 51 will be brought before the Senate floor on next Tuesday, September 17th.

We want to repeat our adamant opposition to S. 51. The text of our original letter follows:

While we fully support the cleanup of dangerous hazardous waste sites, we are unalterably opposed to the manufacturing excise tax being proposed for Superfund. We believe such a tax will unfairly impact American manufacturers and will establish a dangerous precedent.

The broad-based manufacturing excise tax, which is really a value-added tax, fundamentally alters the basis upon which the original Superfund program was crafted. While this cleanup is a general societal problem, this "broad-based" tax excludes entire sectors of the economy despite their heavy use of petrochemical products. It would be paid by those who may generate no hazardous waste at all, as well as by those who may already have invested heavily in waste minimization and recycling. The proposed excise tax would also exclude both federal and state government waste generators.

The proposal would establish a cap on the taxes imposed on the very firms that generate most of the hazardous waste, while at the same time instituting a new VAT tax mechanism never before embraced by Congress on a large scale.

We urge you to reconsider the wisdom of this Superfund manufacturing excise tax and reject it in favor of other available means of funding hazardous waste cleanup.

Sincerely,

American Electronics Association; American Appeal Manufacturers Association; American Furniture Manufacturers Association; Grocery Manufacturers of America, Inc.; National Electrical Manufacturers Association; American Textile Manufacturers Institute; American Meat Institute; Chocolate Manufacturers Association; National Confectioners Association; Biscuit and Cracker Manufacturers Association; National Broiler Council; Food Marketing Institute; Corn Refiners Association; Association of Home Appliance Manufacturers; National Pasta Association; Cast Metals Federation; National Food Processors Association; American Frozen Food Institute; American Hardware Manufacturers Association; Manufactured Housing Institute; International Association of Ice Cream Manufacturers; National Foundry Association; Steel Founders' Society of America; Iron Castings Society; Non-Ferrous Founders' Society; Porcelain Enamel Institute, Inc.; Brass and Bronze Ingot Institute; Semiconductor Industry Association; National Lime Association; American Die Casting Institute; The National Tooling and Machining Association; Gas Appliance Manufacturers Association; The Value Manufacturers Association; American Standard, Inc.; Carnation Company; Litton Industries; Deere and Company; R. J. Reynolds Industries, Inc.; The Maytag Company; Gould Inc.; Whirlpool Corporation; Lennox Industries; Caterpillar Tractor Company; General Motors Corporation; The Minter Machine Company; Ralston-Purina; White Westinghouse; Beatrice Companies, Inc.; Riverside Furniture Corporation; Eaton Corporation; Armstrong World Industries, Inc.; Russell Corporation; Stewart-Warner Corporation; ConAgra, Inc.; Americold Compressor Company; Webster City Products Company; Belding Products Company; GR Manufacturing Company; Gibson Appliance; Greenville Products Company; Franklin Manufacturing Company; Edison Products Company; White Sewing Machine Company; Standard Sewing Equipment Company; Columbus Products Company; Frigidaire Company; Mansfield Products Company; Philco International Corporation; Kelvinator Appliance Company; Athens Product Company; The Bullard Company; White-Sundstrand Machine Tool Company; WCI Controls and Data Systems; Blaw-Knox Foundry and Mill Machinery; Aetna-Standard Engineering Company; Aurora Steel Products; Richards-Wilcox Manufacturing Company; Jerguson Gage and Valve Company; Copes-Vulcan; Hupp Company; Kelvinator Commercial Products; White Consolidated Industries, Inc.; Philip Morris Companies, Inc.; Congoleum Corporation; Procter and Gamble; General Foods Corporation; USG Corporation; The Greyhound Corporation; Interbake Foods, Inc.; Hallmark Cards, Inc.; Textron, Inc.; Dart and Kraft, Inc.; Burlington Industries, Inc.; Libbey-Owens-Ford Company.

GEORGE W. KOCH.

SPECIAL WASTE FINDINGS

Mr. SIMPSON. Mr. President, I support the Baucus amendment to S. 51 to clarify congressional intent concerning Superfund coverage of wastes that are suspended from regulation under the Resource Convervation and Recovery Act [RCRA]. These wastes are described in section 3001(b) of the Solid Waste Disposal Act and include, principally, drilling muds and brines, mining wastes and utility byproducts. In 1980, Congress suspended these wastes from regulation as hazardous wastes under RCRA pending completion of studies by EPA to determine their potential adverse effects. Later in 1980, Congress also excluded these special study wastes from the definition of "hazardous substances" covered by Superfund.

EPA nonetheless has decided to consider sites containing these wastes as possible Superfund targets, based on the presence of trace hazardous constituents in the wastes. However, the hazard ranking system [HRS] used to rank sites for Superfund action exaggerates the potential harm from these high-volume, low-toxicity wastes. An amendment to the HRS is needed to prevent EPA from spending a substantial portion of the Fund on sites that simply do not pose anywhere near the environmental concerns posed by the estimated thousands of abandoned waste dumps that deserve priority attention.

This amendment would operate in conjunction with section 120(c) already contained in S. 51, which requires EPA within 18 months to revise the HRS to assure that it accurately assesses the relative degree of risk to human health and the environment. Pending revision of the HRS, the proposed amendment requires EPA to make four specific findings before listing a special study waste site, essentially to ensure that the potential hazard is based on the concentration and toxicity quantity of the waste.

In addition, to ensure EPA's compliance with this requirement, otherwise liable parties could not be held liable for cleanup costs at these sites if EPA failed to make the required findings and support them with appropriate data in any enforcement action. Both the special findings requirement and the limitation on liability would apply until EPA revised the HRS to incorporate the factors reflected in the four special findings.

The amendment also would tie the resolution of the status of special study wastes under Superfund to the results of EPA's studies under RCRA. Following EPA's study for each waste and the required determination of appropriate regulation under RCRA, and special study waste that becomes a RCRA waste will be a Superfund hazardous substance as well. If, however, a special study waste at a particular site is not a RCRA waste—because EPA has determined not to list it as a RCRA waste and it does not fail any of the RCRA characteristics tests—then neither will it be considered a Superfund hazardous substance, even if it contains hazardous constituents.

The amendment would apply prospectively only and would not affect the listing of any site already the subject of, or proposed for, Superfund action. The amendment explicitly does not affect, however, EPA's authority to remove any site from the national priorities list or not to list a site currently proposed for inclusion on that list. The amendment also would not apply to sites that contain special study wastes in an insignificant quantity. The authority of the Administrator or the Attorney General to seek the noncost recoverable abatement of an imminent and substantial endangerment under section 106(a) is not limited by this amendment.

Mr. **BINGAMAN**. Mr. President, I strongly support the reauthorization of Superfund. It is critical for Congress to pass this legislation.

In 1980, spurred by growing public concern over the proliferation and inadequate disposal of highly toxic substances, Congress enacted a 5-year cleanup program, popularly known as Superfund. That program expires on October 1 of this year. Swift action is therefore necessary. During these 5 years since 1980, the program has confirmed that the problem of toxic waste disposal is a threat to thousands of communities and millions of Americans. However, inadequate resources and staffing, lack of commitment, and inadequate authority to respond have prevented the Superfund Program from making substantial progress toward cleaning up leaking toxic wastes.

The debate today focuses on the appropriate site, authority, and scope of the program. Some facts are clear. The magnitude of the hazardous waste crisis is substantially greater than the current program can effectively handle, and the pace of the cleanup has been dangerously and frustratingly slow.

By the end of 1984, there were over 20,000 potentially dangerous sites. The EPA anticipates that 2,000 of those sites will qualify for placement on the National Priority List [NPL]. The NPL contains the sites identified by the EPA as posing the most serious problems. In contrast, the General Accounting Office estimates that as many as 4,000 sites could make the NPL, and the Congressional Office of Technology Assessment estimates that as many as 10,000 could qualify. Presently, the NPL totals 812—538 final and 274 proposed sites.

As of September 1984, less than half of the sites listed by the EPA as needing review had undergone remedial investigation, the first step in defining what further action is needed. The second step, remedial design, consisting of defining the remedy and the action to be taken, has started on 56 of the total NPL sites. The final onsite construction of mechanisms to remove, treat, or contain hazardous waste—remedial construction—has started at only 51 sites. This record of performance must be dramatically improved.

I strongly believe this bill provides the Congress the opportunity to significantly improve our program of toxic waste clean up.

S. 51 would authorize $7.5 billion for the Superfund hazardous waste cleanup program during the next 5 years, nearly a five-fold increase from the 1981-85 period. The Environmental Protection Agency can use money in the fund to clean up hazardous substances and hazardous wasted dumps when responsible parties do not take action quickly enough to protect health and welfare. The funds also support Superfund Program costs and enforcement efforts to require private parties responsible for sites to clean them.

The Superfund as reauthorized includes a strengthened reinforcement and liability section, provisions for citizen suits, strong right to know requirements, and emergency response mechanisms. The bill also provides effective new cleanup requirements, as well as constructive health related provisions.

A major controversy surrounding enactment of the legislation is the financing of the Superfund. The Finance Committee found it necessary to impose a broad-based manufacture's excise tax to raise the $5.4 billion in extra moneys required to meet the $7.5 billion funding level. While this alternative is not perfect, it does seem to be a reasonable means of achieving the minimum level of cleanup we so seriously need. No other workable alternative has been suggested, except using general revenues. However, given the current budget deficit, this option was not considered feasible.

As presently drafted the bill strikes what I think is a proper and reasonable balance of the interests of all Americans. I congratulate the committees for their efforts and I encourage my colleagues to support the bill.

● Mr. EVANS. Mr. President, I rise to express my strong support for S. 51, to extend and amend the Superfund Hazardous Waste Clean-up Program. I commend my able colleagues on the Environment and Public Works Committee and on the Finance Committee for their efforts in bringing this critical legislation before us for consideration. I would like in particular to commend Senators STAFFORD and BENTSEN for their perserverance in pursuing such a strong and balanced bill. This program, so essential to our national commitment to protect human health and the environment, expires September 30—7 days hence. Senate approval of S. 51, extending Superfund for an additional 5 years, comes none to soon.

Our society has come to depend on modern chemical technology and we have benefitted greatly from it. Yet, as we entered this chemical age, we did not suspect that dealing with the wastes of such technology would prove to be the most vexing environmental problem we would have to face. We are still grappling with the legacy of hazardous wastes and substances created by our chemical-dependent society.

When the original Superfund legislation passed in the final days of 1980, I am certain my colleagues here at the time had great expectations for the success of the program and its ability to deal quickly and effectively with the problem of cleaning up abandoned hazardous waste sites. I am equally certain that they are disappointed by the lack of progress. I share their disappointment. But how could anyone have foreseen the magnitude of the problem?

S. 51 does more than merely extend the Superfund Program another 5 years. It provides a more aggressive, thorough clean-up program, reasserting our commitment to a clean, healthy environment. I must again commend my colleagues for providing us a strong, well thoughtout piece of legislation.

I had the pleasure of serving on the Environment and Public Works Committee last year, when much of this bill was developed. S. 51 is an improved version of last year's effort. I am pleased that a number of provisions of especial concern to me were retained as originally drafted—in particular the provisions relating to the selection of remedial actions. I had the pleasure of cosponsoring a new section in the statute with my able colleague, the ranking member of the committee, Mr. BENTSEN. The provisions of this section stress the need to move toward the complete destruction of hazardous substances and address a number of issues related to the degree of cleanup to be achieved by remedial actions. Both are fundamental elements of our efforts to deal effectively with hazardous wastes and substances.

During last year's consideration of a Superfund reauthorization in the Environment Committee, I noted that neither the proposed bill nor the existing law included a statement of principles or goals and objectives. I continue to believe that such a statement would be worthwhile—I am joined by a number of my colleagues in this belief.

The problem of hazardous substances in the environment is complex. Nonetheless, certain basic principles setting out the elements necessary to address these problems can be identified. These principles are:

First, to provide ample Federal authority for cleaning up releases of hazardous substance, pollutants and contaminants;

Second, to assure that those responsible for any damage, contamination, environmental harm or injury from hazardous substances bear the costs of their actions;

Third, to provide a fund to finance response actions where a responsible party does not clean up, cannot be found or cannot pay. This fund should be based primarily on contributions from those who have been generally associated with such problems in the past and who today profit from products and services associated with such substances; and,

Fourth, to provide adequate compensation to those who have suffered economic, health natural resource, and other damages.

By implementing these principles, the major objective of this law will be accomplished: To provide an incentive to those who manage hazardous substances or are responsible for contaminated sites to avoid releases and to make the maximum effort to clean up or mitigate the effects of any such release.

I urge my colleagues to keep these principles in mind as we consider the provisions of S. 51. I would also strongly urge my colleagues to lend their support to this legislation and I am confident they will do so.●

Mr. MITCHELL. Mr. President, I would like to congratulate my good friend from Vermont, the chairman of the Committee on Environment and Public Works for the extraordinary effort he has expended to make possible the timely reauthorization of Superfund. There have been many obstacles in the way over the past 2 years, but he has persevered. He has made it possible for the Senate to approve a Superfund bill which retains the strengths of the existing law. He has made it possible for the Senate to reach a consenus on a five-fold increase of the fund to clean up abandoned waste sites.

He has always been an advocate of compensation for people injured by toxic wastes, and his support for my efforts in this regard has been constant. For this I am personally appreciative.

I think that the people of this country are in the debt of Robert Stafford for his work on Superfund, and on their behalf as well as my own, I thank him.

Mr. HATCH. Mr. President, I wish to make a few comments regarding the Metzenbaum amendment to require the Department of Labor to issue standards protecting the health and safety of employees engaged in hazardous waste operations.

I am sympathetic with the need to protect employees involved in hazardous waste operations and am pleased to have been able to work with the distinguished Senator from Ohio on this matter.

Yet in looking to a conference with the House on the Superfund Improvement Act, I feel it necessary to comment on my unqualified opposition to any amendment which would expand the scope of the Occupational Safety and Health Act or goes beyond the Senate position. It is my understanding that such an amendment may be part of the House version of the Superfund bill.

The Metzenbaum amendment has passed the Senate, with the support of the chairman of the Environment and Public Works Committee. This amendment will address the concerns that have been raised that the Department of Labor issue standards for employees engaged in hazardous waste operations, as well as emergency response operations, by requiring them to do so 1 year after enactment. In addition it will provide training funds to train these employees.

I believe the Senate bill provides adequate protection for these concerns and will ask that this position be upheld in conference committee.

I again thank the distinguished Senators from Vermont and Ohio for their work on this matter, as well as their staffs. I raise this point because it is a matter of considerable importance to the Labor and Human Resources Committee as well as the Department of Labor, and I think it important to make these views known.

Mr. DOLE. I strongly support the reauthorization of Superfund, and I am pleased that the Senate is on schedule with renewing this vital program. That is a tribute to the leadership of Bob Stafford and Bob Packwood, who cleared this legislation through their committees promptly this year. The Senate, at least, will meet the September 30 deadline for continuing Superfund. The prospects for action in the House, I understand, are less certain.

I believe we have an obligation to make sure that hazardous wastes do not permanently damage the environment or the health of our citizens. In addition, I think a compelling case has been made that the hazardous waste problem is so widespread, and the potential cost of cleanup so uncertain, that a substantial increase in the size of the hazardous waste cleanup fund is warranted. For these reasons I voted to report this legislation out of the Finance Committee.

Nevertheless, I do have reservations about some aspects of this bill. Both in terms of the amount of money we are spending and the way we are raising it, fiscal restraint has been given somewhat short shrift.

FUNDING LEVEL

In 1980 Superfund was authorized at a level of about $1.5 billion over 5 years. That initial authorization has enabled us to begin the cleanup process, to learn more about the process and technology of hazardous waste cleanup, and to get a better idea of the cost involved. Although there remains considerable disagreement on the amount of funding that is needed and the pace at which it can be spent effectively, there is no dispute that the problem requires a significantly larger commitment of resources than we made in 1980. Accordingly, I supported the administration's recommendation for a $5.3 billion program over the next 5 years. That is about 3½ times larger than the program commitment we made in 1980.

At the same time I am not sure the case has been made for the $7.5 billion program recommended by the Environment Committee and funded by the Finance Committee. We need to know a lot more about the cost of effective cleanup, and about how far we have to go to ensure the public health and safety with regard to a particular hazardous waste site, before we can be sure that $7.5 billion can be spent intelligently on this program in the next 5 years. I am willing to defer to the expertise of the Environmental Protection Agency on the funding question, since they are the ones in charge of the cleanup, and they have the most direct knowledge of the costs and problems involved.

Finally, at a time of severe fiscal stress, I think we have to be cautious in setting funding levels for any program: however worthy the goal. We should not let enthusiasm for a very popular and important program cloud our judgment as to what we can and should spend on that program. I would have preferred to see us agree to raise $5.3 billion, and subject requests for more funds to the appropriations process. I understand, however, that there is overwhelming sentiment among my colleagues for the funding level in this bill—so the issue seems settled in the Senate.

TAX INCREASE

As I have indicated previously, I am uncomfortable with establishing a wholly new, broad-based revenue source to finance this higher funding level for Superfund. At the time the Finance Committee made its decision to adopt a manufacturers' excise tax, I said that the fact that a new tax starts out with a low rate and a limited purpose is no guarantee it will stay that way. The entire income tax system started out with similar limitations, and that did nothing to stop its expansion.

I understand the desire to spread the burden of financing Superfund a bit more broadly, while still maintaining a relationship between the hazardous waste problem and the payors of the tax. In this case, the theory is that manufacturing activity in general is the source of the hazardous waste problem. But if we take that argument to its extreme, we ought to say that hazardous waste is a byproduct of an advanced industrial society—in which case the tax ought to be broadened even further.

But I am reluctant to go to that extreme at this time, because it seems to me that doing so opens the door to significant new taxes or increases in existing taxes. That is not what the economy needs right now. Further, I do not think it is a coincidence that the Finance Committee found it easy to vote for a $7.5 billion program when that program is largely funded by a very small tax on a large number of manufacturers. I fear that coupling this broad new tax with a popular program both removes considerations of fiscal restraint from our deliberations and guarantees that this tax will expand by leaps and bounds in the not too distant future.

I would indicate that there have been many good faith efforts to come up with an alternative funding package. Those efforts have not been successful, partly because the administration has not been able to recommend a package that excludes general revenues or borrowing. I understand there may yet be an effort to change this tax title, however.

I cannot, then, endorse this new tax. Let me reiterate that I strongly support the Superfund, and I will do whatever I can in this debate to ensure that it is reauthorized with much greater resources than it has had in the past. But I wish we could have done better in structuring a revenue package for this bill that would raise the necessary funds without opening the door to an endlessly expanding program.

Mr. LAUTENBERG. Mr. President, I would like to commend my distinguished colleagues, the chairman and ranking minority member of the Environment and Public Works Committee, Senators STAFFORD and BENTSEN, for their excellent work in managing the Superfund Improvement Act of 1985, S. 51. Since consideration of the bill began 1 week ago, over 50 amendments have been adopted by the committee. Without their leadership, expeditious consideration of the bill would have been impossible. As a result, the Senate now stands ready to approve its first reauthorization of the landmark 1980 Superfund statute, less than 1 week before the taxing authorities of the program are due to expire.

Mr. President, I indicated my support for the bill when consideration of S. 51 began last week. I am pleased that many amendments to further improve the bill have since been adopted by the Senate, including a number of amendments that I joined in offering this week: the emergency preparedness and response amendments, indoor air quality research amendment, Federal facilities reporting requirements amendment, lead-free drinking water amendment, permanent waste treatment research and development amendment, and modifications to the toxic chemical inventory provision of S. 51, a provision I sponsored in committee. Again, I would like to thank the leadership of the committee for supporting these amendments.

Mr. President, there are a number of issues that have been the focus of attention during consideration of Superfund's reauthorization but have not been addressed by S. 51. Some of these issues may be addressed in the House as it continues its work on the Superfund reauthorization. They include schedules for site studies and cleanup, citizen suits in the case of Superfund sites which present an imminent and substantial endangerment, and a Federal cause of action in court for victims of exposure to toxic substances. These are important issues that I hope we will address in conference.

Additionally, Mr. President, I am disappointed that there was not sufficient support for the amendment offered by my colleague from California, Senator CRANSTON, to increase the size of the fund to $10 billion. I was a cosponsor of this amendment because I believe that this level of funding more accurately reflects what we will need to clean up toxic wastesites at an appropriate pace. New Jersey alone estimates that it will need over $2 billion to complete its cleanup work.

No one denies that billions of dollars will be required to complete the cleanup task. The arguments against a $10 billion Superfund have focused instead on how fast the Environmental Protection Agency can effectively spend funds over the next 5 years. I believe that these issues can be addressed and that EPA can expand and speed up the cleanup process if it wants to. As a member of both the Environment and Public Works and Appropriations Committees, I intend to pursue these issues and investigate the bottlenecks that have slowed down the pace of the program.

Also on the issue of the program's pace, I am disappointed that the Senate did not adopt schedules for Superfund site studies and cleanup. S. 51 is peppered with schedules: schedules for toxicological profiles of the most commonly found substances at Superfund sites, schedules for Federal facility site studies and cleanup, and schedules for implementing new programs such as the toxic chemical inventory and emergency preparedness provisions. I am hopeful that the House bill will contain schedule provisions for listing sites, initiating studies of sites, and initiating and completing cleanup. In this instance, the conference can look closely at the efficacy of provisions to establish schedules for cleanup at Superfund sites. We must hold EPA's feet to the fire and increase the pace of cleanup.

Mr. President, the bill before us today will expand and improve the Superfund Program in many important ways. It has been a pleasure to work with my colleagues on the Environment and Public Works committee on this bill. I urge my colleagues to support S. 51.

Mr. MOYNIHAN. Mr. President, I rise to join the distinguished managers of S. 51, Senators STAFFORD and BENTSEN, to speak of the critical importance of reauthorizing the Superfund Program promptly.

The problem of carelessly disposed of hazardous wastes did not arise overnight, but our national awareness of them did emerge quickly. In New York, we knew something was wrong in the early 1970's; on August 7, 1978, when President Carter declared a Federal emergency at a place called Love Canal, the entire country knew.

Throughout the 1930's and the 1940's, all manner of hazardous substances had been buried in what was once meant to be a canal for navigation and for power. In time, through an unfortunate sequence of events, it became the site for a school and for a neighborhood. And in the time since we discovered it for what it was, it has become, through another unfortunate sequence of events, a symbol of how poorly both private industry and our Government have copied with the hazards of improperly disposed hazardous wastes.

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act—the Superfund Program—and began the slow process of searching for other potential Love Canal's, and learning how to make them safe again. Little did we know in 1980 how many there would be, how long the cleaned would take, or how much they might cost.

The Environmental Protection Agency has had slow start. Six of our most hazardous toxic waste dumps have been cleaned up, but the Agency has said that 541 more deserve places on the national priority list of the worst sites. EPA also estimates that the number may grow to 1,500 or 2,500; the Office of Technology Assessment believes the number could reach 10,000. And these numbers do not include tens of thousands of lesser dumps that will ultimately be left to the States for cleanup. In New York alone, we have found over 1,400 candidate sites so far.

In 1980, we thought that $1.6 billion spent over 5 years would bring us well along the way to solving this problem; now we know better. If the EPA estimates are right, the final cleanup cost for only the most hazardous dumps will reach between $7.6 and $22.7 billion—and these numbers are very optimistic. Probably unrealistic. One thing we have learned in 5 years is that making good on our commitment to protect the public health is going to cost a lot more money.

We also have learned that we cannot expect rapid results—it takes a long time to determine just what the problem is at each site, how big the problem is, and how best to solve it so as to protect the public. Six sites completed in 5 years is far—very far—from good enough, but there are signs that the EPA now takes its responsibility to protect the public health more seriously than perhaps it once did. It is abundantly clear, however, that the vast bulk of our toxic waste problem will remain with us for years to come.

We also have learned how little we really knew about how best to rid ourselves of this mess; 5 years after the Superfund Program began, and 7 years after the emergency declaration at Love Canal, we still do not have good methods for cleaning up many of these hazardous sites—including the one at Love Canal.

But today, unlike 1980, there are few things that we know we can do, to make the best of this situation.

We can act speedily to reauthorize this program before its authority to raise money expires at the end of this month.

We can provide a responsible sum of money for the next 5 years. I and my colleagues from the Environment and the Finance Committees have wrestled with the numbers for the past 2 years; $7.5 billion for the next 5 years is the number agreed upon by both committees, and the one deserving of our support.

We can refine the program based on what we have learned over the last 5 years; S. 51 does this well.

And we can establish a modest program to help give us what we do not now have, new technologies that work in the field, to help us, in the next 5 years, to do the job more effectively. Mr. President, this bill includes an amendment I authored to establish a program of applied research and development with Superfund to do exactly that.

This new program is designed to use a portion of the funds that are recovered from responsible parties at Superfund sites to advance our knowledge of how best to clean them up. It is primarily a field demonstration program. We have much laboratory data, and programs in place to obtain more. What has been missing is authority for the Environmental Protection

Agency to test new technologies at Superfund sites; with this amendment, they are directed to do so where it makes sense to do so.

Mr. Chairman, nothing makes more sense than Congress reauthorizing the Superfund Program, with solid, sensible legislation such as we have before us, S. 51, and with dispatch. The citizens of communities across the country are still waiting.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quroum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. Mr. President, I believe we are ready for third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quroum call be rescinded.

The PRESIDING OFFICER (Mr. WARNER). Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the bill was read the third time.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I ask unanimous consent that S. 51, as amended during the course of its consideration in the Senate, be printed. Knowing the widespread interest in this legislation, and being well aware of the number of technical and substantive amendments that have been adopted during the week S. 51 has been before the Senate, I am sure it will be useful and helpful to have the bill as it will be passed by the Senate available in its amended and corrected form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I am sure I shall have more to say before we pass this bill. I would like to bring to the attention of the Senate that the Superfund bill has been considered now on the 17th, 18th, 19th, 20th, 23d, and 24th of September, or for 6 days or parts thereof, and it has consumed, as of 5 minutes ago, some 18 hours and 5 minutes of time. There have been, however, but three rollcall votes and we have been able to consider 48 amendments. Due to the excellent work of staff on both sides of the aisle and the committee and others who have had an interest in amendments, we have been able to agree to 44 of the amendments, we have rejected 2, and 2 have been withdrawn.

My compliments to the staff on both sides of the aisle, all of the members of the committee, and others who have taken an interest in producing this bill. I am, of course, very happy and relieved that we have reached this point. I am sure it would not have gotten here half as fast if it had not been for the help of my two good friends here, the ranking minority member of our committee [Mr. BENTSEN], working with me in the bipartisan spirit in which we have always worked, and the chairman of the Finance Committee [Mr. PACKWOOD] and members of his committee.

Mr. BENTSEN. Mr. President, let me say, when we talk about the number of amendments that were passed and the few that were rejected, it is only because the chairman of the committee has done an extraordinary job in trying to work out differences and trying to find ways in which differences can be accommodated in cleaning up toxic waste sites in this country. He has done a marvelous job.

The staff on both the Republican side and the Democratic side have put in some incredibly long hours and put them in very capably. I thank them.

I also want to say how much I have

appreciated working with my chairmen—both chairmen, Environment and Public Works and Finance. I think, in approaching this bill and the tax measure, what we have accomplished has been a very equitable distribution of the tax load across the manufacturing capacity of this country. It does relate to the toxic products that all of us are trying to see if we can take away from our environment and do it in an expeditious way. I am appreciative of that.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, the citizen suit provision of this bill indicates that suit may be brought for a violation of any "standard, regulation, condition, requirement, or order," which has become effective under this act. As I understand it, this clause is meant to apply to Federal laws and requirements only except to the extent that a State requirement is incorporated in an enforceable order, agreement or decree under the Superfund Act. Also, the word "condition" is intended to mean those conditions associated with permit requirements. Is that correct?

Mr. STAFFORD. The Senator is correct.

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, earlier today, I made a unanimous consent request with respect to the printing of the bill as it was being amended in the Senate, at the time of its reaching third reading. I now move to vitiate that request.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 2005, a bill to amend title II of the Social Security Act and related provisions of law, to make minor improvements and necessary technical changes, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STAFFORD. Mr. President, I move to strike all after the enacting clause of H.R. 2005 and insert in lieu thereof the text of S. 51, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Vermont.

The motion was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. STAFFORD. Mr. President, I believe that the minority leader is agreeable to our proceeding with the unanimous consent request now.

Mr. BYRD. I am.

ORDER FOR VOTE TO OCCUR AT 1 P.M., THURSDAY, SEPTEMBER 26, 1985, AND THAT PARAGRAPH 4 OF RULE XII BE WAIVED

Mr. STAFFORD. Mr. President, I ask unanimous consent that the vote occur on H.R. 2005 at 1 p.m. on Thursday, September 26, 1985, and that paragraph 4 of rule XII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

[From the Congressional Record, Sept. 26, 1985, pp.S12158-S12168, S12184-S12209]

SUPERFUND IMPROVEMENT ACT OF 1985

Mr. GORTON. Mr. President, I want to express my strong support for S. 51, the Superfund Improvement Act of 1985. I commend Senator STAFFORD and members of both the Environment and Public Works Committee and the Finance Committee for their work toward establishing a strengthened Superfund, and I urge my colleagues to vote in favor of this vitally important legislation.

Reauthorization of the Superfund is crucially important to the people in Washington State and throughout the country. The authority of Congress to raise revenues and appropriate funds to support the Superfund will expire on September 30, 1985. Failure to pass a 5-year reauthorization prior to the expiration of the existing taxing provision on September 30 will cause tremendous disruption in EPA's cleanup program. EPA already has implemented a slowdown of the cleanup program, and cleanup work at numerous sites in the State of Washington and nationwide has been slowed or halted. Without an assured source of funds for cleanup activities during the next 5 years, major disruptions and potentially long-lasting damage will occur in the long-term cleanup of toxic waste sites.

Across the State—from Whidbey Island to Spokane—residents have experienced the contamination of land and water due to the improper use and disposal of hazardous materials. There are currently 13 sites in Washington State on the Superfund national priorities list and 13 additional sites in the State have been proposed for the list, including five sites located on Federal property.

In Tacoma, WA, the South Tacoma Channel has been contaminated by chlorinated organic solvents from a number of waste disposal sites. This has caused contamination of the surrounding soil and ground water, and a significant portion of the drinking water supply for over 150,000 people also has been contaminated. Cleanup activities are in the design stage and long-term cleanup action will be delayed if Congress fails to reauthorize the Superfund.

In Spokane County, a 40-acre landfill has contaminated a nearby stream with cholorinated organic solvents and poses a grave threat to a large portion of the county. This area is part of the Spokane aquifer, which is the sole source of drinking water for 350,000 people in the region. A cleanup feasibility study is being completed for this site and if Congress fails to reauthorize the Superfund by September 30, the design and implementation of the cleanup activities could be delayed indefinitely.

These are just two examples of the dangers facing citizens in the State of Washington and these scenarios are being repeated in hundreds of communities across the Nation. There is no question about the need to maintain a strong Superfund. It is the Federal Government's responsibility to ensure that the cleanup of both privately owned sites and those sites located on Federal facilities proceed, without delay. It is absolutely unacceptable to continue allowing Americans to risk exposure to toxic wastes. But that is precisely the kind of risk we would be taking by having anything less than the strictest waste cleanup law in effect. We must remove toxic waste from our countryside without unnecessary delay and, to the extent possible, the costs for that removal should be borne by those originally responsible for causing the damage.

S. 51 will not only reauthorize Superfund, but will make changes in the law which will expand and accelerate the Federal Government's program to clean up hazardous waste sites and protect the public health and environment from dangerous releases of hazardous substances.

S. 51 will go a long way toward accomplishing this goal, and I urge my colleagues in both the Senate and the House of Representatives to approve this legislation swiftly.

Mr. D'AMATO. Mr. President, I rise today in support of H.R. 2005 (formerly S. 51), the Superfund Improvement Act of 1985. I want to commend my colleague, Senator Stafford, in his role as chairman of the Environment Committee, and Senator Packwood, in his role as chairman of the Finance Committee, for their leadership on this issue.

I am extremely pleased that the Senate acted responsibly in reauthorizing this important legislation before the September 30 expiration date. The timely reauthorization of this bill is of the utmost importance in New York, which has the fourth highest number of Superfund sites in the Nation. There is no question that these cleanups must proceed as quickly as possible to protect the health and safety of our citizens.

Although the U.S. Environmental Protection Agency had asked for only $5.3 billion for this 5-year program, I felt very strongly that we should not reduce the funding level of $7.5 billion provided in the Senate bill. The Congressional Research Service has indicated that this additional money can be spent effectively and efficiently by the Environmental Protection Agency to accelerate these cleanups without overwhelming the Agency.

As the sponsor of S. 606, the Community Right-to-Know Act of 1985, I fully support the Superfund amendment by Senator Bentsen which will provide information to the public on the presence of hazardous substances in their community without creating unnecessary paperwork requirements for the industry. I also was pleased that the Senate unanimously adopted an amendment by Senator Lautenberg which will provide a framework for emergency response on a local level.

Mr. President, I commend the Senate for crafting a responsible approach on this tremendous important issue. I am pleased to support this bill today, and it is my sincere hope that the House of Representatives will act quickly to pass a strong Superfund reauthorization.

Thank you, Mr. President.

Mr. KENNEDY. Mr. President, today a critical piece of legislation is before the U.S. Senate. It concerns the preservation of our environment, the protection of our health and the health of our children. The question before the Senate is whether at long last this Nation is serious about ridding ourselves and future generations of the threat of toxic waste. The passage of S. 51 to reauthorize a strong and expanded Superfund Program will be an important step toward this goal.

But I would have hoped that we could have done better after 5 years experience with the Superfund Program. We must do more.

It was a sad day for the U.S. Senate when earlier this week it turned its back on the human suffering caused by toxic waste. Once again pressure from the White House and intense lobbying from industry interests managed to keep any hint of victim assistance out of the Superfund Program.

For the past 5 years we have had the incredible and unjustifiable standard that says that if public property is damaged by hazardous waste, there can be compensation, but if a human being is injured, if a mother miscarries, if a small child dies from the same poisonous pollution, then the law says there can be no compensation from the Superfund. And that is an unacceptable situation.

The fact is that 35 million people in our society lack any form of health insurance whatsoever, and many of these millions live in areas exposed to the deadly dangers of toxic waste.

But the Senate was unwilling to accept even a limited demonstration program targeted to provide relief to the neediest of these victims. Once again we have a multibillion dollar Superfund Program that allows compensation for public property and not one penny for people who suffer.

Even the current level of funding in the Senate bill is inadequate—it should be increased.

When Superfund was enacted in 1980, many of us believed that the hazardous waste problem in the United States was widespread. However, we had very little concrete information on which to base our decisions concerning the size of the fund. But we did know that perhaps hundreds of thousands of Americans were being threatened by a silent killer—an often tasteless, odorless killer—which had poisoned their drinking water or fouled their air.

Every day, new toxic waste sites are being discovered across the Nation. In Massachusetts alone, EPA estimates that over 300,000 residents are potentially exposed to the harmful effects of the 21 national priority sites in my home State. And every day, more and more people are living with the spectre of chemically induced disease. The EPA estimates that 2,000 sites will eventually reach the national priorities list. But the Office of Technology Assessment, in their report on Superfund strategy, says that a more realistic projection is that 16,000 sites will require cleanup, at a cost of perhaps $100 billion.

Every year millions of Americans are being exposed to improperly disposed toxic waste from over 20,000 hazardous waste sites across the country. EPA estimates that at 541 priority sites, 6 million Americans located within 3 miles of these toxic waste sites are drinking contaminated ground water—and nearly another 6 million are drinking contaminated surface water.

The impact of delay on the public health cannot be measured in dollars and cents. During my 23 years in the U.S. Senate I have never been more moved than by the tragic consequences I have seen in my own State of Massachusetts due to the impact of hazardous waste sites.

I have seen the tears, heard the cries, and felt the pain of these families who, sadly, are not unique. Their stories are repeated throughout communities across this country. And yet, so far we have neither eliminated the danger nor compensated the victims for the pain and suffering which has been such a part of their lives for far too long.

Despite its flaws the new Superfund provides a ray of hope, an opportunity to defuse the most serious toxic time bombs.

I want to commend my colleagues Senator STAFFORD and Senator BENTSEN, for their continued efforts to enact this legislation. They are strong advocates for the rights of victims who have lived through the nightmare of toxic waste in their neighborhoods.

I am especially grateful for the support they provided for amendments that I offered to strengthen the bill by providing a pilot program for removal of lead contaminated soil in urban areas such as Boston and Chelsea, to provide adequate funding for needed health studies, and to prevent unnecessary disruption of cleanup in communities like North Dartmouth, MA.

The preservation of our environment and the protection of the public health are responsibilities that transcend partisan lines. We all share a fundamental commitment to insure that every American avoids unnecessary illness and lives in a clean and safe environment—free from drinking water tainted with cancer-causing chemicals; free from airborne toxins, chemical lagoons, contaminated landfills, and leaking sunken barrels filled with poison.

I hope and expect this bill to pass with overwhelming bipartisan support.

Mr. MURKOWSKI. Mr. President, I support S. 51, the bill to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA].

The problem of improperly disposed hazardous waste is one of the most serious environmental and social problems facing this Nation. In 1980 Congress responded to this problem by passing CERCLA, or Superfund, as it is popularly known. This law is unique in that it combines different types of legislation—independent revenue generating, public works, and liability creating. No one knew how well, or whether, such legislation would work; but the nature of the problem justified an innovative and ambitious response.

We now have the experience of nearly 5 years of Superfund implementation to guide us. Although few would contend that the law is perfect, there is a general consensus that its approach is fundamentally sound and that it is evolving into a workable scheme for addressing the problem of cleaning up leaking and abandoned hazardous waste disposal sites.

S. 51 builds on the basic concept established by CERCLA in 1980. Most of the provisions of the bill are designed to enhance CERCLA's ability to address the problem in a more efficient and economic manner. Additionally, there are a few provisions which attempt to remedy perceived inadequacies in the current law. Most important among the changes made by S. 51, however, is the considerable increase in the size of the program.

Since 1980 we have acquired a great deal more information on the number of hazardous wastesites which may eventually require cleanup and the seriousness of the threat to human health and the environment posed by those sites. As a result of this information, the public works aspect of CERCLA has been expanded substantially by increasing the size of the fund out of which cleanups are publicly financed. To generate the revenues necessary for this expanded effort, S. 51 imposes a Superfund excise tax on manufactured products sold in the United States.

I have serious reservations about the imposition of the Superfund excise tax. The Federal Government is currently spending $200 billion more each year than it receives in revenues. In such an economic climate I believe that enactment of this type of tax should not be interpreted as Congress' desire to balance the Federal budget by increasing the tax burden on all Americans by means of a hidden value added tax. On the other hand, I recognize the extreme need for a substantially increased Superfund effort. I am also of the opinion that it will be impossible to generate $7.5 billion in a fair and equitable manner without turning to the Superfund excise tax. As a consequence, I support, though reluctantly, the imposition of that tax.

Mr. President, I commend the primary sponsors of this legislation and the Senate environment and Public Works Committee for the extraordinary effort that has been devoted to the drafting and refining of S. 51. It is a bill which extends, improves and expands a vitally important environmental law.

Mr. RIEGLE. Mr. President, today, we are reauthorizing one of the most important pieces of legislation we will deal with this year—the Superfund Program. Since the program was enacted in 1980, we have discovered many more abandoned and leaking hazardous wastesites in this country than had originally been predicted.

The Environmental Protection Agency now tells us that there are 17,000 possible abandoned sites across the country and that as many as 2,500 may require remedial action. In my State of Michigan alone, 1,100 dumpsites with the potential to contaminate ground water have been discovered.

The National Geographic magazine's cover story in March 1985 was on hazardous waste and featured the story of a toxic wastesite in Michigan—the Berlin and Farro incineration site in Swartz Creek, near my hometown of Flint. The article relates the efforts of people living near the site, and in particular of Mrs. Verna Courtemanche, to bring the site to the attention of State and Federal authorities.

Mr. President, I ask that this article be printed in full at the conclusion of my statement.

I am bringing this story to the attention of the Senate today because I think it illustrates the magnitude of the hazardous waste problem in this country, and, in particular, the horrors that Mrs. Courtemanche and many others like her across the country are facing because they live near a site that poisons their air and water. They are victims, in a sense, of our national progress in developing new and more sophisticated products. And while I believe strongly in the need to continue to expand and develop the manufacturing base in this country, I also believe that we must accept responsibility for cleaning up areas like these that are threatening the health and well-being of those who, by chance, live nearby.

There is no question that the cost of cleaning up these sites is very high. Long-term remedial action where no ground water contamination has occurred averages $4 to $6 million per site to complete the studies and remove contaminated soils. Where ground water is contaminated, cleanup costs can run $17 million or more. The Michigan Department of Natural Resources estimates that it would cost at least $2.9 million to clean up 600 of the sites in my State alone.

The problem is huge, the cost is great, and progress to date in cleaning up sites has been slow. There are currently 850 proposed and final sites on the National Priority List [NPL] for cleanup activity. While the EPA says that remedial investigations and feasibility studies are underway or have been completed at 436 sites, cleanup work is completed at only 11 NPL sites. We clearly have a long way to go to remove this threat to our national health.

Because the scope of the problem is so large, the measures that we have been considering to deal with it are equally large and, consequently, controversial. I would rather support another financing package if one were available. But in order to take care of the hazardous waste problem, we need to make an economic commitment—the program must be paid for and I believe it would be grossly irresponsible to use deficit financing to keep this program going.

So, Mr. President, I rise today in support of a strong, sound Superfund Program. I believe we must send a firm message to the Environmental Protection Agency that we believe in this program and insist that hazardous waste cleanup activities be given top priority in the agency. We should vote for a strong Superfund package so that the people of this country will not have to live in fear. We have heard them ask for help. We should do everything we can to make sure that dangerous hazardous wastes are cleaned up as efficiently and effectively as possible.

The article follows:

HAZARDOUS WASTE

(By Allen A. Boraiko)

Petite and trim at 66, with whitening hair wisping from a bun and a brooch at the lacy throat of her high-collar blouse, Verna Courtemanche suggests a tintype schoolmarm. She has, in fact, taught mathematics in Michigan schools. Parallel lines never met in her classroom, but in the geometry of her life Verna has converged calamitously with hazardous waste. Under way at her doorstep is the cleanup of one of the nation's most threatening chemical dumps.

Verna lives outside Swartz Creek, at a country crossroads 60 miles northwest of Detroit. For weeks last summer 50 trucks a day rumbled by her house ferrying contaminated soil from a nearby field to a landfill in Ohio. To purge the field of toxic metals, used motor oil, drug and dye by-products, and other industrial waste, backhoes and bulldozers have scooped and scraped 120,000 tons of earth. That's merely a first cut, however, at the pollution left by Verna's former neighbor Charles Berlin.

In 1972 Berlin and a partner opened a hazardous waste incinerator. Often it was overloaded, smothering the countryside in acrid smoke so dark and dense that firemen on the horizon would take it for blazing houses and race over. The corrosive murk turned convertible car tops into literal ragtops, reddened children's faces with rash—swelled eyes shut. Verna and friends harried state officials by telephone, rally, and letter for four years before Berlin's smudge pot was permanently closed.

In 1980 Berlin declared bankruptcy. During the next three years, investigators unearthed behind his incinerator five storage tanks and the first of 33,000 drums. They were bursting with waste that Berlin had been forbidden to burn, yet still allowed to haul—from chemical plants, auto factories, steel mills, refineries, railroads.

Find followed find. In the grim stew of a holding pond, one million gallons of oily muck were laced with polychlorinated biphenyls—PCBs. Until their United States production ended in the late 1970s, PCBs lent durability to hydraulic fluid, to coolant for electric transformers, and to plastics—wide use that now makes PCBs a universal as well as persistent waste, one that accumulates in fish and causes animal cancers.

In another pond, it was believed that drums of hydrochloric acid and barrels of cyanide lurked like mines, needing only a blow for their chemicals to leak, mix, and form a cloud of lethal gas. When the pond was safely dredged in May 1983, Verna and the other 165 evacuees cheered. Today they find they were given a reprieve only to serve an indeterminate sentence.

"We're prisoners," Verna told me. "We can't sell our homes, we're afraid to drink from our wells, and out-of-town friends shy from visits. My sister-in-law won't take gifts of my raspberry jam any more."

Michigan and the U.S. Environmental Protection Agency (EPA) have so far spent six million dollars at Swartz Creek, and some of the 200 firms whose waste was dumped there have pledged 14 million dollars more. Many tons of tainted soil remain, leaching contaminants to local aquifers with every rain. To map groundwater pollution will take several years; eliminating it—if needed and if possible—could take decades.

"At times," says Verna, "I've almost felt that addressing the problem of hazardous waste just makes it worse. You scream and holler, government acts, and easy answers elude you. But your only choice to solve the problem is to give it more attention, more effort. We're learning to do that, but I wonder if we're learning fast enough."

It is no small irony that Charles Berlin began storing up trouble in Swartz Creek at the height of national campaigns to curb environmental pollution. In the early 1970s visibly smoggy skies and cloudy streams got headlines, it was still largely out of mind.

Then, in 1978 at Love Canal in Niagara Falls, New York, rain popped leaking drums out of the ground on a black tide of long-buried chemicals. Hazardous waste has been front-page news ever since.

It has driven hundreds of families from Love Canal and made a ghost town of Times Beach, Missouri, permanently evacuated in 1983. Dusty dirt roads there had been sprayed a decade earlier with oil contaminated by dioxin, a highly poisonous waste product of some industrial chemical reactions. EPA had its own exodus in 1983, when administrator Anne Burford and other top officials resigned. They left amid public outcry about feeble regulation of hazardous waste and pinchpenny delay in using a five-year, 1.6-billion-dollar "Superfund." The fund was set up by Congress in 1980 to bankroll the cleanup of old waste dumps and spill sites posing grave danger to water supplies or human health.

At the root of all this trouble is waste that EPA classifies as toxic, ignitable, corrosive, or dangerously reactive. Such waste is an environmental tar baby no modern society can shake off. It clings to us as paint sludge from appliance factories, as dregs of chrome and nickel from metal-plating shops, as spent raw materials for varnish, carpets, and detergents at chemical plants. We're dogged by solvents that have dry-cleaned our clothes and degreased microchips for computers. Mercury in an exhausted watch battery is hazardous waste. So is the butane residue in a disposable cigarette lighter and the lye in an "empty" can of oven cleaner.

No one knows the true sum of our toxic throwaways, but the 264 million metric tons regulated by EPA in 1981 would fill the New Orleans Superdome almost 1,500 times over. Since 1950 we've disposed of possibly six billion tons in or on the land, steadily increasing our potential exposure to chemicals that can cause cancer, birth defects, miscarriages, nervous disorders, blood diseases, and damage to liver, kidneys, or genes.

Partly by luck and partly because we now sweep less hazardous waste under the rug than a decade ago, we've so far escaped a major health disaster. Yet in critical areas the effort to control dangerous waste stands at a stalemate, and we risk making a bad situation worse.

To be sure, we've made some progress. In 1976 Congress passed the Resource Conservation and Recovery Act. RCRA directed EPA to regulate hazardous wastes for the first time, requiring them to be tracked and handled from creation to disposal at licensed and inspected facilities that have plans and money for safe closure and years of monitoring. As RCRA has raised disposal costs, many companies have altered their operations to reduce waste or to reuse it for energy and raw materials.

Congress intends RCRA to prevent another Love Canal, the catastrophe that prompted creation of the Superfund. The fund at Swartz Creek and to clear similar immediate threats at about 400 other dumps by early this year. Soon to be renewed, it may expand to more than ten billion dollars. Meanwhile environmental groups and chemical companies have formed a nonprofit corporation—Clean Sites Inc.—to aid the cleanup of at least 20 dump sites by the middle of 1985.

As heartening as these improvements are, there's less to them than meets the eye. Vast amounts of hazardous waste still go unregulated. For example, EPA exempts five million tons of industrial wastes discharged as domestic sewage, including most of the metal-finishing industry's toxic metal dregs. These pass through city wastewater treatment plants and concentrate in the sewage sludge we spread on soil and sink at sea.

The land remains the chief catchall for hazardous waste. But enforcement of RCRA rules and monitoring for groundwater pollution and spotty at most hazardous waste disposal sites—pits, ponds, deep wells, and landfills—many of which overlay or penetrate aquifers, natural underground reservoirs that supply much of our drinking water. Thousands of these sites hold old deposits of toxic liquids, yet they operate without liners and drains to stop and collect leakage—required at new disposal sites accepting less dangerous waste.

Landfills, even poorly monitored ones with suspected leaks, receive most of the waste exhumed at Superfund sites. Chemical treatment can detoxify it and incineration can destroy it, but reburial costs less, at least in the short run. EPA lists 786 Superfind sites nationwide, has fully cleaned 12, and expects eventually to purge 1,500 to 2,500 at a cost of as much as 23 billion dollars. Even this estimate may prove low, however, if old ghosts rise from new graves.

Finally, it doesn't help that PCBs, PCP, TCE, and the other specters that haunt waste dumps can't be seen but seem inescapable. With refined detection methods we can now find invisible traces of waste almost anywhere we look in water, soil, and air. But even experts don't always know if or how seriously these subtle threats endanger our health. Fearing the worst, we've grown as grim about hazardous waste as people menaced by plague, and in the bitterest irony of all, modern waste treatment plants that could spare us future harm and worry are no more welcome in our communities than dumps. NIMBY—"Not In My Backyard"—has become our watchword.

Mired in such a mess, you take comfort where you can find it.

"We're doing a lot better than a few decades ago," says Robert Forney, executive vice president of E. I. du Pont de Nemours & Co., the leading U.S. producer of synthetic chemicals. "If we clean up our past mistakes and adhere rigorously to recent improvements in managing toxic waste, we'll catch the problem in time."

Chemical companies create two-thirds of our regulated hazardous waste, almost 180 million tons in 1981. The industry detoxifies the bulk of its harmful by-products, and as the richest and best-policed waste makers, firms like Du Pont pay out much of the estimated five billion dollars spent annually in the U.S. on hazardous waste control.

At Du Pont's mammoth Chambers Works beside the Delaware River in New Jersey, I clambered the catwalks of a wastewater treatment plant that scrubs 40 million tons of toxic manufacturing residues a year. Ninety-nine percent is water, drafts of the Delaware mixed with railcars of lime and carbon to form an acid-neutralizing slurry. Dirty whitecaps rode this churning cocoa into settling tanks where pollutants sank like silt. Rendered chemically inert, they were later dredged and pressed into gray cakes as big as cartwheels and sent to a company landfill, the irreducible minimum of waste from the Works.

There would be more if Du Pont did not also maintain colossal vats of waste-eating bacteria, cleansing water on its way back to the Delaware. Linger downwind, and your nose swoons from overwork.

Often it makes sense to feed waste to a fire instead of running it through the wash, and two million tons a year go into industrial incinerators. At a Dow Chemical Company plant near Baton Rouge, Louisiana, I found a cavernous rotating furnace whose hellish heat reduces toxic organic waste—steel drums and all—to steam and to ash that can be safely buried.

Other incinerators at Dow's Louisiana Division burn toxic waste to generate steam heat and cut fuel bills. Economy measures are nothing new in big industry, but they have special appeal considering Superfund provisions that hold corporations liable for the negligence of hired waste haulers and disposal firms. The less waste to be gotten rid of outside the company fence, the better.

Called on twice in two years to share cleanup costs, at Swartz Creek and at another mismanaged disposal site, General Motors has begun storing automaking supplies in reusable bulk containers, leaving fewer 55-gallon drums to dispose of, with residues of such poisons as engine coolants. Allied Corporation reacts a caustic sludge with other hazardous waste to synthesize a raw material for gases in air conditioners and refrigerators. And 3M, Minnesota Mining and Manufacturing Company, sells its ammonium sulfate to fertilizer makers, who convert this corrosive by-product of videotape manufacture into plant food.

Such ingenuity shows that industry can reduce hazardous waste and handle it safely when enticed by a savings or a profit and goaded by potential penalties. Yet most often the carrot is too small and the stick too little.

For example, although incineration reduces the volume and dangers of hazardous waste, industry cremates less than one percent of its toxic castoffs. Most companies view incineration as an option only for those with money to burn—it costs $50 to $800 per ton of waste, three times more than to bury it. Not surprisingly, industry goes first to the disproportionately cheap landfill.

California has banned burial of wastes with high levels of cyanides, PCBs, toxic metals, or strong acids and has hiked landfill fees to encourage chemical treatment, incineration, and recycling. But well-intentioned legislators forgot that regulations can't be made in a vacuum. Last year shipments of PCBs from California to Idaho's sole hazardous waste landfill tripled to 90,000 tons.

That might have been avoided if landfills everywhere had to charge according to the full cost of coping with their hazards. We might be better off, too, if government put as much stress on reducing and reusing waste as on regulating it. In 1981 U.S. industry recycled barely 4 percent of its toxic by-products, partly through waste exchanges, organizations that transfer one firm's waste to another firm as raw material. Despite the potential of waste trading, since 1979 EPA has spent almost no money and assigned only one man part-time to promote it.

Much more serious, EPA's budget for drafting and enforcing waste control regulations is one-fourth less today than in 1981. Recent increases have not restored deep cuts made early in the Reagan Administration, which argued that any slack could be taken up by the states, since they may administer RCRA with federal authorization and money. But EPA has begrudged both.

Sue Moreland, executive director of the Association of State and Territorial Solid Waste Management Officials, told me: "RCRA authorization has been a sham, and the environment has suffered because of it. This year 50 states must share 47 million dollars in federal aid for waste control. Meanwhile personnel are diverted from inspection and enforcement to paperwork, because to win authorization, state regulations must be rewritten to conform with federal standards, even if they make no sense." West Virginia told EPA it had no need to control waste transport by trolley car—objection overruled. Landlocked Vermont has had to regulate ocean-disposal barges.

"Less than a decade ago we had no national program to manage toxic waste," I was reminded by John Skinner, director of EPA's Office of Solid Waste. He nonetheless conceded that "on average, 60 percent of major disposal facilities don't obey all the new laws and regulations. And both we and the states have been slow to inspect and curb violators. We're starting to crack down, but for years government at any level wasn't moving fast enough to prevent trouble."

Even today violations at legitimate disposal sites usually draw only a warning letter, and illegal dumpers stand every chance of escaping EPA's thin net of 35 criminal investigators. The most likely dumpers are small and mid-size companies harder put than big industry to afford increasingly expensive pollution controls.

In Los Angeles, where he suspects that 80 percent of all toxic waste is improperly disposed, city attorney Barry Groveman leads the Toxic Waste Strike Force—an environmental SWAT team drafted from state and county health departments and city police, fire, and sanitation forces. Offenders nabbed by the strike force risk jail, fines, and the shame of having to repent their dumping in full-page newspaper ads.

"We're trying to redeem an honor system that incites people to be dishonorable," Groveman told me. Nights can find him and his raiders in sewer manholes, placing pollution detectors downstream of a suspect firm. By day they may helicopter up the concrete banks of the Los Angeles River, alert for stains betraying illicit discharges. This surveillance led one day to a pipeline that one company built to dump caustic wastes in a sewer presumed to be outside the strike force's jurisdiction. City attorneys convinced a judge it wasn't, and the judge convinced the guilty firm's vice president—with a $75,000 fine and four months in jail.

"Another dodge is to spray toxic waste on ordinary trash in conspiracy with bribed garbagemen," says Dr. Alan Block, a University of Delaware criminologist and research director of the New York State Select Committee on Crime. "Compact the trash, send it to a city landfill, and who'll know?"

Dr. Block has found organized crime "at every level of the toxic waste disposal industry—in hauling, landfilling, incineration, and recycling—all over the country. This stems from the mob's domination of garbage disposal in the Northeast, and from the appalling futility of environmental regulations and their poor enforcement. Organized crime is besting disorganized government."

For this he partly faults lax monitoring of waste shipments. EPA requires these to be tracked by manifests filled with state authorities and listing the origin, nature, and destination of transported waste. "Few states check out discrepancies in manifests," Dr. Block told me, "so they're widely doctored. And often it's easier to get a permit to haul waste than a license to cut hair."

Worse, Dr. Block says hundreds of legitimate hazardous waste disposal companies must buy permission to operate alongside competitors allied with or controlled by organized criminals. Payoffs go to mobsters through a national network of loan sharks. Passed on to customers as a cost of doing business, this tribute to criminals is a hidden tax on lawful waste disposal.

Indiscriminate burning of toxic waste in residential and commercial boilers nets the mob still more money. Some liquid wastes can be mixed with heating oil and safely burned in the boilers of hospitals, schools, and apartment and office buildings. Unregulated by EPA, this blending annually supplies consumers some 19 million tons of low-cost, recycled fuel. But sham recyclers have been watering down immense amounts of it with the waste of companies attracted by cheap, no-questions-asked disposal.

At Congress's insistence, EPA might curb this abuse in 1986. Last year New York State set limits on how much waste may be mixed with heating oil and restricted recycled fuel to high-temperature burners. Dr. Block believes, however, that 40 percent of the heating oil sold in the New York City area continues to be laced with toxins that only an industrial incinerator can adequately combust—and that ordinary boilers are spewing into the sky.

Through another loophole in the law, four million tons a year of hazardous wastes slip into municipal sanitary landfills from which they steadily leak. EPA now allows "small-quantity generators"—you, me, the local exterminator or dry cleaner—to discard like a banana peel all but the most deadly waste, as much as one metric ton a month. And our trash includes an amazing array of toxic stuff: insect sprays, antifreeze, chlorine bleach, nail polish. Only a handful of the nation's 15,000 sanitary landfills are built to capture and drain away these poisons before rain flushes them down through the soil.

Since federal money for inspections ended in 1982, only a few states regularly check to see if such leachate is percolating into groundwater. More than one city landfill is a Superfund site, and Congress has recently ordered EPA to narrow its one-ton-a-month exemption to 220 pounds. Some states are stricter, and some hold collection drives. Last summer, during Amnesty Days, the people of one Miami suburb alone turned in 12 tons of hazardous waste that would otherwise have gone out with the garbage.

Had we been so careful all along, we might not be so worried today about groundwater pollution. The vast majority of us have safe drinking water, but our supplies are not so well distributed that we can afford to add hazardous waste to them, already burdened with highway de-icing salts, farm sprays and fertilizers, and seepage from gasoline and septic tanks.

Many large cities—Tucson, Memphis, and Miami among them—rely entirely on groundwater. So do most rural Americans. They tap a resource more plentiful than all the water in the Great Lakes, and manmade pollution corrupts only one percent of it.

"Unfortunately," says David Miller, a leading hydrogeologist, "that tiny bit is often fouled just where a lot of people need it." Toxic waste contaminates the groundwater supply drawn on by three million people on Long Island, New York, including Miller. In New Jersey, Atlantic City shifted its well fields to escape chemicals seeping from Price's Pit, a Superfund landfill a mile away. Tap water was turning laundry yellow and pots black.

Groundwater is polluted at the majority of Superfund sites, especially where toxic liquids were pooled in pits and ponds to evaporate. Marian Mlay, director of EPA's Office of Groundwater Protection, told me that thousands of the more than 181,000 impoundments still in use hold hazardous waste and were designed to leak.

"They were meant to leach waste into the ground as much as to evaporate it," she said. "Many impoundments are on soil so porous that their builders couldn't have threatened groundwater more if they had tried."

In a canyon 50 miles east of Los Angeles an engineer showed me drainage pumps at the Stringfellow Acid Pits. This Superfund site still holds most of the 34 million gallons of solvents, acids, toxic metals, and DDT sent there between 1956 and 1972. Until capped with clay in 1981, ponds overflowed during winter storms. Waste taints the groundwater serving nearby homes, and despite ten million dollars spent to halt it, a finger of pollution has poked into an aquifer supplying seven eastern Los Angeles suburbs. Half a million people live there.

Cleanup costs soar at Superfund sites with sullied groundwater, climbing, for example, to a projected 1.8 billion dollars at the U.S. Army's Rocky Mountain Arsenal in Colorado. Stringfellow could cost 60 million dollars to sanitize. Facing such bills, EPA has decided on a policy of triage. The agency plans to clean up essential aquifers but will likely abandon others and pipe in drinking water from elsewhere. In some places EPA will try to manage contamination with pumps and containment methods so that it does not reach the public.

Joel Hirschhorn, director of a 1983 study of hazardous waste for Congress's Office of

Technology Assessment, thinks containment schemes are the Maginot Line of those who even now don't grasp the scope of our toxic troubles. Noting how pollution outflanked EPA at Stringfellow, Hirschhorn told me: "I doubt we'll come fully to grips with hazardous waste until more of us are affected by groundwater contamination. That will be traumatic for millions of Americans. It's one thing to hear about a dump across town and quite another to be warned not to drink the water from your own tap. The crisis is almost inevitable because even if we had full compliance with EPA regulations, they don't protect our water or our health."

Hazardous waste does seem certain to infiltrate drinking water for years to come. EPA plans to bar new landfills and lagoons above vital aquifers, to ban burial of some solvents, and to require liners at many old impoundments, but leaks need not be stopped or even located.

About 60 percent of all toxic waste legally disposed of in the U.S. is pumped down injection wells, to be imprisoned between layers of impermeable rock. Near Corpus Christi Bay, amid the puncture marks of Texas oil drillers, I visited a well that each month swallows as much as six and a half million gallons of caustic liquors from refineries.

The well belonged to Chemical Waste Management, the world's largest waste disposal company. Under high pressure, treated waste shot down a steel pipe clad in concrete—down past the brine of the intruding Gulf of Mexico; down through layers of dense clay; down, finally, to the sand of an ancient sea nearly a mile beneath my feet. And shale under it all, a subterranean breakwater marking the bottom line.

I asked the well supervisor where the sidelines were. "You can't be sure where or how far and fast injected waste will spread out," he said. "It might hit something like a deposit of clay and flow around it like an amoeba, taking the path of least resistance."

If waste hits cracks and crevices in fractured rock, it can flow to groundwater. To limit such mishaps, most waste wells have been drilled in the well-mapped geology of Texas and Louisiana petroleum fields. For half a mile around the Chem Waste perforation at Corpus Christi, old gas and oil wells have been sealed top and bottom, so that errant waste has no pipeline to drinkable water. Monitoring wells stand watch.

Last year, from Chem Waste wells in Ohio, 45 million gallons of steel-pickling acid and other wastes seeped into porous sandstone. Well-casing cracks and corrosion were at fault; for this and other violations Ohio fined Chem Waste $10,000,000.

In Emelle, Alabama, Chem Waste runs a 2,400-acre landfill, the country's biggest. Its trenches resemble open-pit mines cut into 700 feet of gray chalk. Chem Waste hopes they'll hold waste secure for 10,000 years.

At trench number 20 I watched trucks switchback into the earth, their gears grinding out a dinner call to roaring bulldozers waiting to snuffle in the arriving waste like eager pigs. They tamped drums with chalk and heaped cement dust into watery black sludge to solidify it and neutralize acids. A diesel pig snorting smoky satisfaction nudged broken barrels from a Superfund dump in Indiana up next to a leachate drain.

Ringed with monitoring wells and capped by clay when full, the Emelle trenches may be the safest of the nation's 199 active toxic waste landfills. EPA assumes all will leak and forbids burial of high-hazard liquids. Yet it will permit a landfill with a plastic liner as thin as a raincoat to open in a swamp.

"Every landfill poses a future threat," allows William Hedeman, the EPA official in charge of Superfund cleanups. A good many involve old landfills, and EPA tries to recoup its costs by settlement or suit when if can find those liable. This replenished the Superfund by a mere seven million dollars before it was exhausted early last year. "That hardly enables us to keep a finger in the dike," says Hedeman. "Some sites may cost hundreds of millions each to remedy."

Congress is about to renew and expand the Superfund and may lay out a cleanup timetable, unhappy that although EPA has removed imminent hazards at hundreds of dumps, only 12 have been fully purged. But deadlines may not help much.

"When Congress wrote Superfund into law in 1980," William Hedeman tole me, "it ordered EPA always to choose the most cost-effective cleanup remedy. Nobody wants toxic waste in their backyard, but the law is skewed toward leaving some there. We may haul away drums and dirt and leave groundwater contaminated because it's cheaper to pipe in water than to clean the aquifer. And it's hard to move fast when you don't know which remedies will work."

At Times Beach, the Missouri town emptied by dioxin, the immediate remedy has been to buy the town and relocate 2,000 people, at a cost of 33 million dollars. The town is one of more than 40 sites in Missouri under investigation by EPA, which is testing methods to detoxify or incinerate dioxin-contaminated soil. But getting rid of dioxin could prove easier than learning whether we really need to.

Vanishingly small doses of dioxin cause miscarriages, birth defects, liver damage, or death in laboratory animals; to guinea pigs it's 200 times as lethal as strychnine. But mammals vary in sensitivity to chemicals, and dioxin's only undisputed, but not inevitable, effect in humans is a skin rash, sometimes severe and lasting. Even workers heavily exposed in industrial accidents seem not to have suffered worse. Nor have scientists found any abnormal rates of illness among former residents of Times Beach.

Still, animal tests indicate dangers, and the long-term health effects of dioxin remain unknown. That's true of practically all toxic wastes: A health survey hardly ever establishes whether they slowly and subtly poison us.

"That demands proof of cause and effect that science cannot now provide," says Dr. Roger Cortesi, head of EPA's Office of Health Research. "Usually people's exposure to chemicals is uncertain, not enough people can be studied to reveal minute health effects, and detectable injuries may have other causes and take years to appear."

This makes it difficult to measure risks. Most of us don't even try: We conclude that injury from hazardous waste is always as probable as it is possible—that if the worst can happen, it will. I asked Dr. Donald Barnes, EPA's chief adviser on dioxin, how regulators determine degrees of risk.

"When we assess the seriousness of a potential threat to health," he said, "we always lack full information. So we cautiously make worst-case assumptions, such as that dioxin causes cancer in humans as easily as it does in rats. To that assumption we add others—for instance, a conservative estimate of the dioxin exposures that might put you at risk of developing cancer. A prudent regulator acts on these assumptions as if they were realistic in every situation. That confuses people into taking them as documented fact, but things are not always as calamitous as they seem."

EPA is checking hundreds of possibly contaminated factories and dumps for dioxin and surveying its level in the environment. Municipal incinerators emit dioxin—as may home fireplaces—and residues may remain in forests, fields, and lawns from dioxin-tainted herbicides, common until EPA largely halted their use in 1979.

The dioxin molecule is exquisitely difficult to identify. But in Midland, Michigan, where Dow Chemical has been testing soil, fish, and river water for dioxin from company discharge pipes and incinerators, chemists using ultrasensitive instruments can detect it at parts-per-quadrillion levels. That's like zeroing in on one drop in 12 billion gallons of water.

EPA suspects that dioxin causes some human cancers and says Dow is the main dioxin source in Midland, a legacy of past production of the herbicide 2,4,5-T. Dow suggests that dioxin is naturally widespread, and while it can persist in humans, it does so at harmless levels. That thesis escaped trial by jury early in 1984, when Dow and six other companies settled out of court with thousands of veterans who claim injury by the 2,4,5-T in Agent Orange, a defoliant that was sprayed on Vietnamese jungles.

Dr. Vernon Houk, director of the Center for Environmental Health at the National Centers for Disease Control in Atlanta, Georgia, told me that we can reasonably associate disease with more recent toxic encounters—assuming significant exposure. But what is "significant?" We rarely know.

"Our skill in detecting toxic chemicals exceeds our ability to medically interpret what we find," says Dr. Houk. "Risk assessment at most dump sites is somewhat less precise than a five-year weather forecast."

Gert Heinemann canvasses Europe for customers for the *Vulcanus II*, a seagoing incinerator ship out of Rotterdam in the Netherlands. He sees from the inside how Europeans manage—and mismanage—their hazardous waste.

"I'd do more business if England stopped dumping in old mines and in the North Sea," Heinemann told me. "Italy? A basket case! Sweden agitates piously against ocean incineration, but lets its industry give us waste anyway—keeps it out of Swedish landfills."

Flying over the North Sea a few days later, I peered into the huge incinerator stacks of the *Vulcanus II*, glowing orange with burning waste. Gray wisps of steam carried away dilute hydrochloric acid, which fell to the sea and turned to salt. By neutralizing its exhaust with seawater instead of expensive stack scrubbers, the ship can dispose of waste at half the cost of incinerating it on land. For years EPA has considered allowing *Vulcanus II* and a sister ship to incinerate waste in the Gulf of Mexico, but Gulf coast residents who fear toxic slicks and dead fish have kept the idea in dry dock.

In Bavaria and in two other West German states, collecting stations funnel most toxic waste to regional incinerators and landfills funded by industry and government. East Germany, however, serves as Europe's dumping ground to earn hard currency. Crude pits there take foreign waste at such low rates that West Germany has limited border crossing points for waste shipments—lest "toxic tourism" grow.

The dynamics of disposal in Germany impressed me most at a salt mine on the East-West frontier. Since 1972 Kali and Salz AG has bricked up waste in caverns left by miners, salting it away in formations stable for 250 million years and presumed immutable for eons more.

"Each year we mine, we gain 30 more years of disposal space," said engineer Norbert Deisenroth, showing me maps. Dated and multicolored, they cataloged 400,000 tons of waste in drums. "Purple . . . August 14, 1978 . . . Kepone pesticide . . . Virginia." West Germans must cope with old dumps and half-forgotten war rubble containing live bombs and chemical weapons, but they've avoided calamity comparable to the dumping that in the 1970s extensively polluted Virginia's James River with toxic residues of Kepone production.

The Japanese, otherwise fastidious, have suffered cruelly from careless disposal of hazardous waste. In the 1950s at Minamata Bay in southern Japan, waste mercury from a chemical plant contaminated fish, eventually inflicting disfiguring paralysis or slow death on thousands of people, including children in the womb. Minamata disease hit central Japan in 1965, and harbor dredging at the site of the first disaster threatens to send mercury up the food chain once again.

In Haginoshima, a farm village on Japan's west coast, elderly Miyo Komastsu graciously bowed to meet me despite the agony of bone-splintering cadmium poisoning. Japanese have named Miyo's affliction after the cry it wrings from its victims: "*Itai, itai. . . . It hurts, it hurts. . . .*"

"Itai-itai disease is chronic," explained Dr. Noboru Hagino, who in 1961 linked it to rice from paddies polluted by toxic waste from a mine upriver of his ancestral village. "It mainly affects aged women, after repeated pregnancies. Calcium drawn from a woman's bones by her growing child is replaced by cadmium, and in time bones can so soften that they snap at a sneeze." Miyo was brought to Dr. Hagino in a sling, with 28 major fractures.

The cadmium dumping ended in 1971, when villagers won a lawsuit. More than a hundred have died, but Miyo and other survivors draw benefits under a unique Japanese law that aids nearly 85,000 people injured by air pollution or hazardous waste.

Proposals to give similar help to Americans come up often in Congress but never survive debate. For people like Verna Courtemanche of Swartz Creek, the only hope of redress for anxiety, economic loss, and bodily harm is to chance a long and costly court battle against a polluter. "That's woefully inadequate," says Congressman James Florio, who helped write the Resource Conservation and Recovery Act and the Superfund law. "We're not spending billions to clean up dumps because they're eyesores—they threaten public health. Ignoring the injury they cause people is illogical and unjust."

But government relief makes even less sense to Michael Horowitz, general counsel of the U.S. Office of Management and Budget. "If you want to understand the explosive implications of such schemes," he says, "look at black-lung compensation for coal miners. When it began in 1969, nobody thought it would cost more than 300 million dollars. Now it costs the Treasury almost two billion dollars yearly. Imagine multiplying a small cohort of miners by the number of people potentially exposed to toxic waste. If two children near a dump develop leukemia, and health statistics suggest that eventually 12 children will sicken, do you compensate just the two, or 12, or every child for miles around because you can't predict exactly which ones will get the disease?"

One hallmark of our recent experience with hazardous waste is naïveté. Industry is too trusting of supposed state-of-the-art lagoons and landfills. The Reagan Administration thought a nation that had voted for less government would tolerate less protection of the environment. Congress overrates the power of law to budge economic forces, social inertia, and scientific unknowns. TV and newspapers supply a catalyst for cleanup with the drama of people trapped by dumps, but seldom ask whether the engine of reform can go anywhere other than in circles if its only fuel is alarm. And we all want a solution overnight to a crisis decades in the making.

But long neglect is hard to relieve, not least because we can't always agree on what to do with hazardous waste. Caught up in debate that is more often confusing than conclusive, lawmakers, scientists, industry, and the public fall badly out of step with each other and sometimes march off in entirely different directions.

The people of Warren, Massachusetts, could reasonably object, "Why here, in *our* town?" as they turned back the attempt of a developer and a state commission to locate a waste treatment complex in their community last year. And the commission could legitimately ask, "If not here, *where?*"

"Technologically, toxic waste is no harder to control than air or water pollution," says William Ruckelshaus, twice administrator of EPA. "But toxic waste frightens people more because we're less certain about the dangers it poses—risks we likely can't eliminate, only reduce. We may suffer more recrimination, false starts, and environmental insults as we tackle this dilemma, but there's no doubt of our solving it."

Verna Courtemanche hopes so. "I'd like to think I'll live long enough to see an end to problems with hazardous waste," she told me. "I want a new water supply, and I want the government to monitor 'my' dump for at least 50 years and promise that the land will never be a field for crops or a playground for kids. That's not ideal, but it's probably the best we can do. So there it is."

Mr. GLENN. Mr. President, I strongly support passage of the Superfund Improvement Act of 1985.

One of the most significant improvements made by this legislation is the increased funding level for hazardous waste cleanups. Since we enacted the Superfund Program in 1980, more information has been obtained about the magnitude of the cleanup problem. In its March 1985 report, the Office of Technology Assessment [OTA], estimated that 10,000 sites or more may reach the national priority list. In OTA's opinion, the cost of cleaning up these sites could exceed $100 billion. The General Accounting Office has estimated that costs for cleanup range between $6.3 billion and $39.1 billion. In short, while there is no definitive figure on total cleanup costs, it is indisputable that existing Superfund resources will be insufficient.

In my State, there are now 28 sites listed on the national priority list and the Ohio Environmental Protection Agency is currently investigating over 800 sites across the State which may pose hazards. Although Ohio ranks eighth in Nation in the number of Superfund sites, cleanup is underway at only a few sites, and none of those cleanups is completed. I believe that passage of this Superfund reauthorization will send a clear signal to the American people that further delay of Superfund implementation will not be tolerated.

Beyond increasing the size of the Superfund, this legislation also makes other important improvements in existing law. S. 51 contains new health provisions for testing toxic chemicals found most frequently at Superfund sites. In addition, it requires the performance of health assessments at all NPL sites. S. 51 contains new provisions to improve planning for emergencies caused by chemical releases as well as requirements for companies that handle hazardous substances to provide more information to the public.

Finally, provisions which are of special interest to me, to ensure and expedite the cleanup of Federal facilities are included in the legislation. I believe that the Secretary of Energy and other applicable agencies should request an adequate funding level in their appropriations to clean up dangerous waste sites. The Government has the responsibility to clean up sites it owns just as industry is called on to pay for its contribution.

Mr. President, an expanded Superfund is vitally important and I urge my colleagues to join me in supporting passage of S. 51.

SUPERFUND PROGRAM NEEDED TO PROTECT PUBLIC HEALTH

Mr. PELL. Mr. President, I am voting for final passage of the Superfund Improvement Act. I view the passage of this measure as an absolutely essential step in protecting the public health and our Nation's environment.

I also am pleased to support final passage because the Superfund reauthorization, as amended, now includes provisions authorizing a research program on hazardous contaminants in indoor air and directing EPA to conduct that research program.

This measure, which I cosponsored as a separate bill, focuses research on the location and amount of radon pollution in buildings in the United States, and to provide guidance and information on measures to reduce human exposures to radon.

As reported by the Environment and Finance Committees, the Superfund Improvement Act of 1985 authorizes nearly five times the $1.6 billion authorized by the original legislation for 1981-85. Both committees are to be commended for their hard work and the production of an excellent measure.

I regret, however, that we did not boost funding beyond the level recommended by the committees to a level in the $10 billion range. It is apparent that the scope of our hazardous waste problems are multiplying far more rapidly than the funding.

At the start of this decade, the Comprehensive Environment Response, Compensation and Liability Act [CERCLA], which I supported as an original cosponsor, created the Superfund Program.

Since the program's inception, Superfund has brought more than $70 million to New England and more than $6.5 million to Rhode Island for work on hazardous waste sites from 1981-85. This influx of Federal funds, although sizable, has not been nearly enough.

Superfund work has not been completed on any of Rhode Island's eight national priority list sites—including a dreadfully dangerous site in Coventry, RI, that was among the first in the Nation to be targeted for cleanup under Superfund.

We have not only failed to complete these cleanup tasks to assure the safety of Rhode Island residents, we have a list of 160 additional sites that includes many potential candidates for the national priority list. Clearly we are not doing enough, fast enough.

In the case of the Superfund Improvement Act, no general revenues would be authorized for Superfund. Superfund expenditures, since they are financed by separate taxes, would not add to the huge national Federal deficit.

We have to build a strong and effective program to protect our citizens and our environment from the dreadful threats of hazardous wastes. Threats that, in Rhode Island, have included chemicals that explode if exposed to water and chemicals that form nerve gas if exposed to sunlight.

If we do not act now, for fear of the financial cost, we face far higher costs in the future. I am not just talking about increased financial costs, I am talking about increased disease, injuries, and death.

As I said in testimony on Superfund more than 6 years ago, it is hard to conceive of a higher priority than the health and welfare of our citizens and the preservation of a clean and healthy environment for them and future generations.

Mr. LEVIN. Mr. President, the Superfund bill is of utmost importance to the Nation and the innocent victims whose lives are disrupted by the consequences of living near a toxic waste dump.

The citizens of Michigan are no exception. Michigan has 64 sites on the Environmental Protection Agency's [EPA] national priority list [NPL] and ranks second in the Nation in Superfund sites. The Michigan Department of Natural Resources estimates at least 1,000 hazardous waste sites are located in the State.

The March 1985, edition of National Geographic featured a sobering article on hazardous waste. One of the toxic waste dumps it mentioned was near Swartz Creek, MI also known as the Berlin and Ferro site. Verna Courtemanche who has led a long fight to get the site cleaned up is mentioned throughout the article.

Let me take a few minutes to quote from the article:

> Verna lives outside Swartz Creek, at a country crossroads 60 miles northwest of Detroit. For weeks last summer 50 trucks a day rumbled by her house ferrying contaminated soil from a nearby field to a landfill in Ohio. To purge the field of toxic metals, used motor oil, drug and dye by-products, and other industrial waste, backhoes and bulldozers have scooped and scraped 120,000 tons of earth. That's merely a first cut, however, at the pollution left by Verna's former neighbor Charles Berlin.
>
> In 1972 Berlin and a partner opened a hazardous waste incinerator. Often it was overloaded, smothering the countryside in acrid smoke so dark and dense that firemen on the horizon would take it for blazing houses and race over. The corrosive murk turned convertible car tops into literal ragtops, reddened children's faces with rash—swelled eyes shut.
>
> In 1980 Berlin declared bankruptcy. During the next three years, investigators unearthed behind his incinerator five storage tanks and the first of 33,000 drums. They were bursting with waste that Berlin had been forbidden to burn, yet still allowed to haul—from chemical plants, auto factories, steel mills, refineries, railroads.
>
> Find followed find. In a grim stew of a holding pond, 1 million gallons of oily muck were laced with PCBs. In another pond, it was believed that drums of hydrochloric acid and barrels of cyanide lurked like mines, needing only a blow for their chemicals to leak, mix, and form a cloud of lethal gas. When the pond was safely dredged in May 1983, Verna and the other 165 evacuees cheered. Today they find they were given a reprieve only to serve an indeterminate sentence.

Verna told me:

> We're prisoners, we can't sell our homes, we're afraid to drink from our wells, and out-of-town friends shy from visits. My sister-in-law won't take gifts of my raspberry jam any more.

I wish I could say this vivid description is an exaggeration. But I assure the Senate that this case is not overstated. Unfortunately, this story repeats itself in every State in this Nation and that is why it is essential that we pass this legislation as soon as possible.

I completely agree with the Environment and Public Works Committee that spending $7.5 billion over 5 years on Superfund is necessary and desperately needed. A good case can even be made for setting the funding at $10 billion over 5 years.

However, I do not agree with the Finance Committee's proposal to finance the Superfund in part with a value added tax [VAT]. It is a regressive, complicated tax. That is why I am pleased that the Senate approved an amendment introduced by Senator HELMS and which I cosponsored that expressed the sense of the Senate that the conferees on the Superfund bill should report back a funding mechanism other than the VAT. As I indicated in my remarks during the debate on the Helms amendment, I believe that the Superfund should be financed by a corporate minimum tax. I am pleased that Senator HELMS indicated that a corporate minimum tax was one of the options that could be considered by the conferees in the spirit of his amendment. This tax reform would improve the equity in the Tax Code by addressing the outrageous situation that tens of thousands of profitable corporations in this country are currently not paying anything in taxes. This tax reform could also provide enought money to finance the Superfund at least at the $7.5 billion rate.

Now that the Senate has acted, I urge our colleagues in the House of follow through with their own actions quickly. It's been said that "haste makes waste." However in this case, it is the only way to get on with the job of getting rid waste.

Mr. QUAYLE. Mr. President, it is

imperative that Congress reauthorize the Comprehensive Environmental Response, Compensation, and Liability Act, known as Superfund, this year. I applaud the Environment and Public Works Committee and the Finance Committee for bringing to the Senate floor a very workable bill.

This program is very important for my State of Indiana. Just this month, EPA added four more Indiana sites to the national priorities list, bringing the total in Indiana to 26 sites. Five removal projects are underway and two more are being prepared. While EPA has obligated $7.9 million from Superfund in Indiana as of the end of July of this year, clearly the additional progress we need to make will be jeopardized if Congress does not complete consideration of this legislation this year.

I support the authorization level as reported in the Environment Committee's bill, $7.5 billion over 5 years. I recognize the enormity of the cleanup chore before us and that current levels are not sufficient to deal with the problem, however, like other fields in which the Government becomes involved, simply throwing money at the problem will not solve it. The Congress has a duty to see to it that these funds are expended wisely and try to achieve the most "bang for the buck."

Developing a revenue source for this authorization level has not been a simple task. Generally, I believe that the Superfund should be supported by a dedicated tax, that is fair and equitable. Furthermore, I have grave reservations of extensively using general revenues in the Superfund. Given our deficit situation, I believe an independent funding source is the best solution to providing reliable financing for the Superfund.

I believe the committee acted wisely in balancing the need for administrative discretion with requirements to assure timely and satisfactory cleanup. EPA retains discretion to utilize the most effective method of cleanup on a site-by-site basis while assuring protection of human health and the environment. Cleanup of Superfund sites is a massive engineering undertaking. Additionally, we are on the fringes of technology both in terms of cleanup technology and engineering practices to develop plans to achieve maximum cleanup. Correcting ground water contamination could take years. Obviously, the expertise necessary to evaluate technology and cleanup strategies is best left with EPA, rather than to be second guessed by Congress.

The Superfund reauthorization bill is one of the most important bills to be considered by Congress this year. I hope our colleagues in the other body will take heed of our action and act quickly to work toward final enactment of this much needed legislation.

Mr. HARKIN. Mr. President, I strongly support this bill.

In 1980, the Congress created the Superfund, recognizing the need to clean up the many hazardous waste sites which endanger the health of all Americans. Unfortunately, progress has been far too slow. Only six priority sites have been cleaned up across the whole country in the last 5 years. The Environmental Protection Agency has begun to address only 20 percent of the 850 sites on the national priority list. And, the General Accounting Office has estimated that we may have as many as 4,000 national priority sites.

Iowa has seven toxic waste sites on the national Superfund list. Twenty additional sites are listed under Iowa's State Superfund law. In addition, it is estimated that 270 Iowa dumpsites contain hazardous or potentially hazardous materials.

In spite of the size of this problem, we have seen years of footdragging and efforts to cut back. Every month of delay only adds to the cost that will have to be paid. There is no saving by delay. Delay only makes many of these sites more dangerous and harder to clean up. It only increases the danger of contaminating the water supply.

This bill calls for spending $7.5 billion over 5 years. Estimates for the total cost of the cleanup efforts range from EPA's figure of $23 billion to the Office of Technology Assessment's view that it could take $100 billion to solve the problem.

We need to approve a larger program. I understand that the administration would like to spend less. But that is the wrong way to go. Studies have shown that the money can be well spent. Spending the higher sum does not really increase costs. It simply has us clean up the sites more quickly. And, in the long run, it means that we will spend less.

I am concerned about a key aspect of the bill—the value added tax charged to every manufacturer in the country.

I voted against the amendment by Senator **Abdnor** which would have exempted fertilizer and animal feed because I believe that if we are going to have this tax, then we should not be creating further exemptions. It should fall on all manufacturing. However, I want to make it clear that I have reservations about any value added tax.

I would have preferred to see the Finance Committee propose a package of taxes which looked more to the polluters.

I do believe that a tax on hazardous wastes would create a very substantial incentive for the producers and users of that waste to find ways to cut down the amount that needs disposal.

With a "waste end tax," we would see producers of waste adopting all types of creative mechanisms to recycle the waste or to avoid its production. And, that would mean fewer expensive and dangerous problems in the future.

I also recognize that there are many technical and substantive issues which prevented the Finance Committee from developing such a proposal including the desire not to favor one disposal method over another through the tax system.

I understand that the Ways and Means Committee plans to seriously look at this question along with other funding mechanisms. If the other body passes a reasonable plan, one providing for reliable funding, I would urge that the conferees sympathetically examine the alternative funding mechanism to the value added tax.

Mr. KERRY. Mr. President, I rise in support of the Superfund reauthorization, H.R. 2005, which we have before us today. I am proud to vote for a bill that I believe is a strong and responsible answer to a complex problem. I urge my colleagues to join with me in commending the determined and fruitful work of the committee in crafting H.R. 2005.

Hazardous wastes represent a complex problem. They pose a direct threat to our citizens and our environment. The improper disposal of these wastes has had a significant negative impact on both terrestrial and aquatic ecosystems. There is little doubt that without management of past and present waste, we could be faced with problems of considerable magnitude.

The extent of our hazardous waste problem and the consequent cleanup efforts necessary are now becoming evident. The number of waste sites on the national priorities list is increasing steadily and the Office of Technology Assessment projects that as many as 10,000 sites may finally be added to the list. Cost estimates of cleanup have also increased. GAO and OTA project that the final cost might total $40 billion and $100 billion respectively. And unfortunately, many of those numbers may have to be adjusted because of problems that are just beginning to reveal themselves. Although I would have preferred a higher level of funding for Superfund, I am pleased that we will be providing almost five times the level of funding during the last authorization.

In addition, I am particularly disturbed by recent reports on the extent of ground water contamination since so many Americans rely on ground water as their primary source of drinking water. I am hopeful that EPA, armed with this strong bill that we are approving today, will make every effort to deal with the issues that will undoubtely develop during the life of this Superfund.

While the problem of how to deal with our toxic waste dumpsites is significant, I believe that we are proving that it is not insurmountable. We have learned much during the first 5 years of Superfund. This bill enables EPA to use this experience, advancements in technology, and increased financial resources to move toward alleviating this environmental threat.

Mr. President, I am proud that the Senate will soon be on record approving a strong commitment to the environment and a strong commitment to the future health and safety of our Nation. I urge my colleagues to support this worthwhile legislation by voting in favor of H.R. 2005.

Mr. MATHIAS. Mr. President, I am pleased to support S. 51, the Superfund Improvement Act of 1985, and I commend the chairmen of the Committees on Environment and Public Works, Finance, and the Judiciary, for their hard work that has brought this measure before the Senate for final passage.

"Out of sight, out of mind" is a proverb which has guided us when it came to disposing of used household items, byproducts of manufacturing processes, old packaging, and other residue of our high-tech American society.

Only recently have we come to recognize the shortsightedness of our ways. Knowing what we know now about the long-term health effects of many of those products we threw away and longsince have forgotten, we have come to recognize our collective responsibility. We have contributed an enormous amount of dangerous matter to our environment without proper safeguards.

We are now paying the price of our throwaway habit in Superfund cleanup costs; RCRA disposal sites and methodologies; Clean Water and Clean Air Act discharge permits, ambient air quality levels, and best available technologies; and in health and disability costs for persons who have medical problems today because of our prior carelessness.

The Superfund bill is part of our collective response to our past carelessness. The difficulty is that there are thousands of toxic wastesites. In Maryland alone, EPA and the State already have identified 168 sites, only half of which have, as of yet, been investigated and evaluated for toxicity, at the expense of the State of Maryland.

Here in Washington, we recently read of electric transformers in a Smithsonian Institution Building that were leaking PCB's. So the problem is all around us and includes the Federal Government as well as everyone else.

The Defense Department occupies a good deal of real estate in Maryland, including 21 former Nike missile sites. They are no longer used and the Department is trying to dispose of them, declaring them excess and transferring them to the General Services Administration.

Many of these underground sites are prime suspects as the sources of ground water contamination affecting surrounding residential communities. The Superfund bill before us maintains the Defense Department's responsibility to assure that those Nike sites are not causing contamination, and that they will not contaminate Maryland before they are transferred for public sale.

Toxic waste is a serious problem for Maryland, where we have had some experience attempting to clean it up. The first Superfund site in the Nation was a site in the city of Baltimore in which drums of poison chemicals had been buried for years. The steel drums began to rust and therefore to leak and there was an imminent health danger to a whole neighborhood. The Environmental Protection Agency responded to the State's request and the two cooperated in a cleanup. Not everyone was satisfied with it, but at least it demonstrated that EPA could be called upon in such circumstances and would respond. There are six sites in Maryland on the national priority list for cleanup. Mr. President, I ask unanimous consent that brief descriptions of those sites and actions taken to date appear in the Record at the conclusion of my remarks

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MATHIAS. The citizens of Silver Run in Carroll County, MD, have been plagued with water problems. These are problems beyond the powers of Maryland to solve for them, however, because the source of the pollution is a toxic wastesite in Pennsylvania. It is an interstate problem.

And it is a problem that affects not just property, but people too.

We have a number of big and important engines of commerce in Maryland, particularly in the Baltimore area. These manufacturers have been the backbone of Maryland employment, industrial strength, and trade through the Port of Baltimore. Yet some of the former employees of those businesses are showing signs of poor health—symptoms of respiratory diseases, unexplained headaches, nervous system disorders, skin rashes, cancers, and even impotence—that may be related to their prior long-term work. We don't know for sure yet what, if any, disabilities, deformities, or shortened life expectancies may appear in their children and grandchildren.

But we do know there is a possibility that some of the jobs these people held, some of the materials they handled or to which they were constantly exposed, and some of the places where they lived have placed them at risk because of toxic substances. We have an obligation to get the facts and determine whether there is a direct causal relationship and at what levels and time periods of exposure.

When faced with the stark reality of cleaning up a toxic waste dump, whether a municipality, private landowner, the Federal-Government, or a present or prior contributor to the dumpsite, the "NIMBY" problem arises—not in my back yard. No one wants toxics anywhere near. So we as a nation must begin to address the nature of the toxic substances we create, their shelf life, and how to safeguard ourselves, our children, and grandchildren from their adverse effects.

I am proud to represent a State which has taken the lead in addressing the problem of toxic waste. Last year, at the urging of the Maryland Waste Coalition, composed of 15 citizen environmental protection organizations, the Maryland General Assembly appropriated $500,000 to the Maryland Superfund to continue State site evaluation and emergency response efforts. I commend the leadership of the executive and legislative branches of the State of Maryland for recognizing the seriousness of this problem and devising an integrated management approach to toxic and hazardous materials.

The technology may not even exist to fully solve all of the problems. And the amount of money that it would require is fantastic. EPA has estimated there are 22,000 sites nationwide to evaluate and that approximately 2,000 of them will require remedial response. The current cost estimate is an average of $8.1 million per site, which will continue to escalate over time the longer we put off the inevitable and let inflation take its toll.

Some of the estimates of the national cost go as high as $40 billion. The bill before us now is nowhere near that sum, but rather a modest $7.5 billion to be expended during the next 5 years. I personally believe the nature and extent of the problem warrants more than this amount.

The job ahead is a huge one requiring money, expertise, technology, and long-term commitments to clean up, contain, and/or reduce the toxicity of many of these volatile elements. It also requires us to reevaluate some of our uses of such toxics, weighing their health costs against the benefits of the products, processes, and lifestyle they help to create.

So this is clearly a Federal problem. It involves interstate pollution issues and a wide array of responsible parties. I believe it is a necessary program. I say that with great deliberation and caution because I believe in reducing the deficit in every possible way. If this were an expenditure we could postpone, I would favor postponement. But the danger to human health is great. The problems can only get worse as the toxic dumpsites fester and the poison spreads. It is time to get on with Superfund and what Superfund will buy, which is freedom from the poisons and toxins of the last century that will poison the next generation if we do not deal with them now.

EXHIBIT 1

MARYLAND SITES ON EPA LIST

Among the 812 (540 final and 272 proposed) hazardous-waste sites on the EPA's Superfund list are the following in Maryland:

Limestone road, Cumberland. The 35-acre site consists of two contiguous areas in Allegany county where officials have identified contamination of ground and surface water from chromium waste on the site. The EPA is preparing a remedial plan to determine the full extent of cleanup required.

Middletown Road Dump, Annapolis. The [illegible] site in a residential and rural area in [illegible] Arundel county has been used to [illegible] rubble, fill material and miscellaneous wastes. Toluene, benzene, paint waste and solvents were stored in at least 12 drums. The EPA, which is conducting a remedial plan for cleanup, is concerned because groundwater in that area is used for drinking. The agency has completed emergency action at the site by removing contaminated soil and installing groundwater monitoring wells.

Sand, Gravel and Stone Quarry, Elkton. At least three acres on the inactive quarry in Cecil county were used until 1974 for the disposal of approximately 700,000 gallons of bulk, solid and semi-solid waste. In 1976, 200,000 gallons of liquid waste and some sludges were removed. The EPA, in 1982, found surface water contamination as well as localized contamination of groundwater. Maryland officials are pursuing local enforcement action against the responsible parties and EPA is pursuing remedial cleanup.

Kane and Lombard street drums, Baltimore. There are about 1,000 drums of toxic waste including benzene, lead and chromium, on the 8.3-acre abandoned dump site, which is about a quarter-mile away from a residential area of 2,500 people. State and EPA officials have begun to remove surface drums and contaminants at the site.

Mid-Atlantic Wood Preservers Inc., Harmans. The Port McHenry Lumber Company manufactures treated wood products on the 3-acre Anne Arundel county site. The lumber is pressure-treated with chromated copper arsenate to protect it against water and insect damage. Maryland officials detected chromium and arsenic in soil and groundwater, and in 1980 the company removed contaminated soil to an approved disposal facility, since then, the state has found surface water draining from the site to Stony Run that was contaminated with copper.

Southern Maryland Wood Treating Company, Hollywood. The 25-acre site in St. Marys county is owned and operated by L.A. Clarke and Son Inc., of Fredericksburg, Va. The company preserves wood with creosote. Manufacturing byproducts such as pentachlorophenol, benzene and lead are disposed of in a landfill and surface impoundment. EPA is concerned by a potential contamination of groundwater, surface water and soil because about 300 people who live within 3 miles of the site depend on groundwater for drinking. The company has excavated and treated parts of the soil.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ABDNOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPERFUND IMPROVEMENT ACT OF 1985

The PRESIDING OFFICER (Mr. WILSON). Under the previous order, there will now be a vote on H.R. 2005, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2005) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

The Senate resumed consideration of the bill.

Mr. STAFFORD. Mr. President, I ask for the yeas and nays on the passage of the bill.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. EAST], is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 86, nays 13—as follows:

[Rollcall Vote No. 196 Leg.]

YEAS—86

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Dixon
Dodd
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Gore
Gorton
Grassley
Harkin
Hart
Hatfield
Hawkins
Heinz
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Thurmond
Trible
Wallop
Warner
Weicker
Wilson

NAYS—13

Denton
Dole
Garn
Goldwater
Gramm
Hatch
Hecht
Heflin
Helms
Mattingly
McClure
Symms
Zorinsky

NOT VOTING—1

East

So the bill (H.R. 2005), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 2005) entitled "An Act to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

II

99TH CONGRESS
1ST SESSION

H. R. 2005

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 23), 1985

Ordered to be printed with the amendments of the Senate

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~**SECTION 1. SHORT TITLE.**~~

~~This Act may be cited as the "Social Security Minor and Technical Changes Act of 1985".~~

~~TABLE OF CONTENTS~~

~~Sec. 1. Short title.~~
~~Sec. 2. Demonstration projects involving the disability insurance program.~~
~~Sec. 3. Disability advisory council.~~
~~Sec. 4. Taxation of social security benefits received by certain citizens of possessions of the United States.~~
~~Sec. 5. Application of dependency test to adopted great-grandchildren for purposes of child's insurance benefits.~~
~~Sec. 6. Elimination of requirement for publication of revisions in pre-1979 benefit table.~~
~~Sec. 7. Fail-safe formula clarification.~~
~~Sec. 8. Extension of fifteen-month reentitlement period to childhood disability beneficiaries subsequently entitled.~~
~~Sec. 9. Charging of work deductions against auxiliary benefits in disability cases.~~
~~Sec. 10. Perfecting amendments to disability offset provision.~~

~~Sec. 11. State coverage agreements.~~
~~Sec. 12. Effect of early delivery of benefit checks.~~
~~Sec. 13. Preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula.~~
~~Sec. 14. General effective date.~~

~~SEC. 2. DEMONSTRATION PROJECTS INVOLVING THE DISABILITY INSURANCE PROGRAM.~~

~~(a) Extension of Waiver Authority.—Section 505(a)(3) of the Social Security Disability Amendments of 1980 is amended by inserting "which is initiated before June 10, 1990" after "demonstration project under paragraph (1)".~~

~~(b) Interim Reports.—Section 505(a)(4) of such Amendments is amended to read as follows:~~

~~"(4) On or before June 9, 1985, and on or before June 9 in each of the years 1986, 1987, 1988, and 1989, the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate.".~~

~~(c) Final Report.—Section 505(c) of such Amendments is amended by striking out "under this section no later than five years after the date of the enactment of this Act" and inserting in lieu thereof "under subsection (a) no later than June 9, 1990".~~

~~(d) INCORPORATION OF CERTAIN REPORTS INTO SECRETARY'S ANNUAL REPORT TO CONGRESS.—Section 1110(b) of the Social Security Act is amended by adding at the end thereof the following new paragraph:~~

~~"(3) All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 704.".~~

~~SEC. 3. DISABILITY ADVISORY COUNCIL.~~

~~(a) APPOINTMENT OF COUNCIL.—Within ninety days after the date of the enactment of this Act, the Secretary of Health and Human Services shall appoint a special Disability Advisory Council.~~

~~(b) MEMBERSHIP OF COUNCIL.—The Disability Advisory Council shall consist of a Chairman and not more than twelve other persons, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers, medical and vocational experts from the public or private sector (or from both such sectors), organizations representing disabled people, and the public. The Council shall meet as often as may be necessary for the performance of its duties under this section, but not less often than quarterly.~~

~~(c) DUTIES OF COUNCIL.—(1) The Advisory Council shall conduct studies and make recommendations with respect to the medical and vocational aspects of disability under both title II and title XVI of the Social Security Act, including studies and recommendations relating to—~~

~~(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;~~

~~(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the appropriate State agency before any determination can be made with respect to the impairment involved;~~

~~(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is re-~~

~~ferred to the appropriate State agency for a disability determination;~~

~~(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;~~

~~(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability; and~~

~~(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be~~

~~able to live independently or work in a sheltered environment.~~

~~(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—~~

~~(A) such individual's skills,~~

~~(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,~~

~~(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,~~

~~(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and~~

~~(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.~~

~~(d) PROVISION OF ASSISTANCE TO COUNCIL; COMPENSATION OF MEMBERS.—(1) The Disability Advisory Council is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary of Health and Human Services shall, in addition, make available to the Council such secretarial,~~

~~clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out such functions.~~

~~(2) Appointed members of the Council, while serving on business of the Council (inclusive of traveltime), shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.~~

~~(e) Reports.—The Disability Advisory Council shall submit a report (including any interim reports the Council may have issued) of its findings and recommendations to the Secretary of Health and Human Services not later than December 31, 1986; and such report and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.~~

~~(f) Termination.—After the date of the transmittal to the Congress of the report required by subsection (e), the Disability Advisory Council shall cease to exist.~~

~~(g) Conforming Amendments.—(1) Section 706 of the Social Security Act is amended—~~

~~(A) by inserting "except as provided in subsection (c)," immediately before "the Secretary shall appoint" in subsection (a); and~~

~~(B) by adding at the end thereof the following new subsection:~~

~~"(c) No Advisory Council on Social Security shall be appointed under subsection (a) in 1985 (or in any subsequent year prior to 1989).".~~

~~(2) Section 12 of the Social Security Disability Benefits Reform Act of 1984 is repealed.~~

~~SEC. 4. TAXATION OF SOCIAL SECURITY BENEFITS RECEIVED BY CERTAIN CITIZENS OF POSSESSIONS OF THE UNITED STATES.~~

~~(a) GENERAL RULE.—Section 932 of the Internal Revenue Code of 1954 (relating to citizens of possessions of the United States) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:~~

~~"(c) TAXATION OF SOCIAL SECURITY BENEFITS.—If, for purposes of an income tax imposed in the possession, any social security benefit (as defined in section 86(d)) received by an individual described in subsection (a) is treated in a manner equivalent to that provided by section 86, then—~~

~~"(1) such benefit shall be exempt from the tax imposed by section 871, and~~

~~"(2) no amount shall be deducted and withheld from such benefit under section 1441."~~

~~(b) CROSS REFERENCE.—Paragraph (3) of section 871(a) of such Code is amended by adding at the end thereof (after and below subparagraph (B)) the following new sentence:~~

~~"For treatment of certain citizens of possessions of the United States, see section 932(c)."~~

~~(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits received after December 31, 1983, in taxable years ending after such date.~~

~~SEC. 5. APPLICATION OF DEPENDENCY TEST TO ADOPTED GREAT-GRANDCHILDREN FOR PURPOSES OF CHILD'S INSURANCE BENEFITS.~~

~~(a) TREATMENT OF GRANDCHILDREN AND GREAT-GRANDCHILDREN ALIKE.—Section 202(d)(8)(D)(ii)(III) of the Social Security Act is amended by inserting "or great-grandchild" after "grandchild".~~

~~(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for which application is filed after the date of the enactment of this Act.~~

~~SEC. 6. ELIMINATION OF REQUIREMENT FOR PUBLICATION OF REVISIONS IN PRE-1979 BENEFIT TABLE.~~

~~Section 215(i)(4) of the Social Security Act is amended by striking out "the Secretary shall publish" and all that follows in the last sentence and inserting in lieu thereof the~~

~~following: "the Secretary shall revise the table of benefits contained in subsection (a), as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply.".~~

~~SEC. 7. FAIL-SAFE FORMULA CLARIFICATION.~~

~~Section 709(b)(1) of the Social Security Act is amended to read as follows:~~

~~"(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 201(a) on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 201(l) or 1817(j), to".~~

~~SEC. 8. EXTENSION OF 15-MONTH REENTITLEMENT PERIOD TO CHILDHOOD DISABILITY BENEFICIARIES SUBSEQUENTLY ENTITLED.~~

~~(a) In General.—Section 202(d)(6)(E) of the Social Security Act is amended by striking out "the third month following the month in which he ceases to be under such disability" and inserting in lieu thereof "the termination month (as defined in paragraph (1)(G)(i)), subject to section 223(e),".~~

~~(b) CONFORMING AMENDMENT.—Section 223(e) of such Act is amended by inserting "(d)(6)(A)(ii), (d)(6)(B)," after "(d)(1)(B)(ii),".~~

~~(c) EFFECTIVE DATE.—The amendments made by this section are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act) on or after that date.~~

~~SEC. 9. CHARGING OF WORK DEDUCTIONS AGAINST AUXILIARY BENEFITS IN DISABILITY CASES.~~

~~(a) IN GENERAL.—(1) Section 203(a)(4) of the Social Security Act is amended by striking out "preceding" in the first sentence.~~

~~(2) Section 203(a)(6) of such Act is amended—~~

~~(A) by striking out "and (5)" and inserting in lieu thereof "(4), and (5)"; and~~

~~(B) by striking out ", whether or not" and all that follows down through "further reduced" and inserting in lieu thereof "shall be reduced".~~

~~(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits payable for months after December 1985.~~

~~SEC. 10. PERFECTING AMENDMENTS TO DISABILITY OFFSET PROVISION.~~

~~(a) IN GENERAL.—(1) Section 224(a)(2) of the Social Security Act is amended to read as follows:~~

~~"(2) such individual is entitled for such month to—~~

~~"(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or~~

~~"(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)), other than (i) benefits payable under title 38, United States Code, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and (iv) benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 210,".~~

~~(2) Section 224(a)(2) of such Act (as amended by paragraph (1) of this subsection) is further amended by striking out "all or part of which" in clause (iv) and inserting in lieu thereof "all or substantially all of which".~~

~~(b) Effective Dates.—(1) The amendment made by subsection (a)(1) shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981.~~

~~(2) The amendment made by subsection (a)(2) shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act) after the month in which this Act is enacted.~~

~~SEC. 11. STATE COVERAGE AGREEMENTS.~~

~~(a) Maximum Period of Retroactive Coverage.—Section 218(f)(1) of the Social Security Act is amended by striking out "is agreed to by the Secretary and the State" and inserting in lieu thereof "is mailed or delivered by other means to the Secretary".~~

~~(b) Positions Compensated Solely on Fee Basis.—Section 218(u)(3) of such Act is amended by striking out "is agreed to by the Secretary and the State" and~~

~~inserting in lieu thereof "is mailed or delivered by other means to the Secretary".~~

~~(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of the Social Security Act) on or after the date of the enactment of this Act.~~

~~SEC. 12. EFFECT OF EARLY DELIVERY OF BENEFIT CHECKS.~~

~~(a) FOR OASDI PURPOSES.—Section 708 of the Social Security Act is amended by adding at the end thereof the following new subsection:~~

~~"(c) For purposes of computing the 'OASDI trust fund ratio' under section 201(l), the 'OASDI fund ratio' under section 215(i), and the 'balance ratio' under section 709(b), benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section shall be deemed to have been delivered on the regularly designated delivery date.".~~

~~(b) FOR INCOME TAX PURPOSES.—Section 86(d) of the Internal Revenue Code of 1954 (relating to taxation of social security and tier 1 railroad retirement benefits) is amended by adding at the end thereof the following new paragraph:~~

~~"(5) EFFECT OF EARLY DELIVERY OF BENEFIT CHECKS.—For purposes of subsection (a), in any case~~

~~where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.".~~

~~(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefit checks issued for months ending after the date of the enactment of this Act.~~

~~SEC. 13. PRESERVATION OF BENEFIT STATUS FOR DISABLED WIDOWS AND WIDOWERS WHO LOST SSI BENEFITS BECAUSE OF 1983 CHANGES IN ACTUARIAL REDUCTION FORMULA.~~

~~(a) IN GENERAL.—Section 1634 of the Social Security Act is amended—~~

~~(1) by inserting "(a)" after "SEC. 1934.", and~~

~~(2) by adding at the end the following new subsection:~~

~~"(b)(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 202(e) or (f) but is not eligible for benefits under this title in that month and who applies for the protection of this subsection under paragraph (3), shall be deemed for purposes of title XIX to be an individual with respect to whom benefits under this title are paid in that month if he or she—~~

~~"(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and~~

~~"(B) would be eligible for benefits under this title in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustment in such benefits under section 215(i), were disregarded.~~

~~"(2) For purposes of paragraph (1), the term 'eligible disabled widow or widower' means an individual who—~~

~~"(A) was entitled to a monthly insurance benefit under title II for December 1983,~~

~~"(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 202(e) or (f) for January 1984 and with respect to whom a benefit under this title was paid in that month, and~~

~~"(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98-21) (eliminating the additional reduction factor for~~

~~disabled widows and widowers under age 60), was ineligible for benefits under this title in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).~~

~~“(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Secretary may prescribe, during the 12-month period beginning with the third month that begins after the date of the enactment of this subsection.~~

~~“(4) for purposes of this subsection, the term ‘benefits under this title’ includes payments of the type described in section 1616(a) or of the type described in section 212(a) of Public Law 93–66.”.~~

~~(b) IDENTIFICATION OF BENEFICIARIES.—(1) As soon as possible after the date of the enactment of this Act, the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow’s or widower’s insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act by reason of the application of section 1634(b) of the Social Security Act.~~

~~(2) Each State shall—~~

~~(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,~~

~~(B) solicit their applications for such assistance, and~~

~~(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.~~

~~(c) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall not have the effect of deeming an individual eligible for medical assistance for any month which begins less than two months after the date of the enactment of this Act.~~

~~**SEC. 14. GENERAL EFFECTIVE DATE.**~~

~~Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect on the first day of the month following the month in which this Act is enacted.~~

That this Act may be referred to as the "Superfund Improvement Act of 1985".

TITLE I

INDIAN TRIBES

SEC. 101. (a) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by striking "and" at the end of paragraph (31), striking the period at the end of paragraph (32), and adding a new paragraph as follows:

"(33) 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and";

(2) in paragraph (16) by striking "or" the last time it appears and by inserting before the semicolon at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(b) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by section 109 of this Act, is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe,

held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".

(c) Section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by section 114 of this Act, is amended by inserting "or Indian tribe" after the phrase "political subdivision" each time that phrase occurs.

(d) Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) in subsection (a) by inserting "or an Indian tribe" after "State";

(2) in subsection (f) by inserting after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation:"; by in-

serting "or Indian tribe" after "State" the fourth time that word appears; by adding before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe"; and by inserting "or the Indian tribe" after "State government";

(3) in subsection (i) by inserting "or Indian tribe" after "State" the first time it appears; and

(4) in subsection (j) by inserting "or Indian tribe" after "State" the first time it appears.

(e) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) in subsection (b) by inserting before the period at the end thereof the following: ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";

(2) in subsection (c)(2) by inserting "or Indian tribe" after "State";

(3) in subsection (f) by inserting "or Indian tribe" after "State"; and

(4) in subsection (i) by inserting after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".

(f) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new section:

"INDIAN TRIBES

"SEC. 116. The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding cooperation in establishing and maintaining national registries), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action,

but not including the provision regarding the inclusion of at least one facility per State on the national priority list).".

DEDICATED DEFENSE PRODUCTION

SEC. 102. Section 101(20) of the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980 is amended by adding the following subparagraph:

> *"(   ) in the case of a facility containing any hazardous substance resulting from manufacturing operations dedicated to the production of munitions or ordnance parts for the Department of Defense (or any subdivision thereof) using equipment owned by such Department or subdivision, the term 'owner or operator' shall include the United States Government;".*

METHANE RECOVERY

SEC. 103. (a) Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following subparagraph:

> *"(D) in the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed (i) the term 'owner or operator' shall not include the owner or operator of such equipment, unless such owner or operator is also the owner or operator of the facility at which such equipment has been installed, and (ii) the owner or operator or manufacturer of such equipment (other than the owner or operator of the facility at*

which such equipment has been installed) shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act, except to the extent that there is a release of a hazardous substance from such facility which was primarily caused by activities of the owner or operator of such equipment other than the recirculation of condensate or other waste material which is not a waste meeting any of the characteristics identified under section 3001 of the Solid Waste Disposal Act.".

(b) Unless the Administrator promulgates regulations under subtitle C of the Solid Waste Disposal Act addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle: Provided, however, That if the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of that subtitle, then such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.

RESPONSE ACTION CONTRACTORS

SEC. 104. Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of of 1980 is amended by adding the following new subparagraph:

"(   ) In the case of any person carrying out a written contract or agreement with any Federal agency, or any State (or any political subdivision thereof), or any responsible party to provide any response action or any services or equipment ancillary to such response action—

"(i) the term 'owner or operator' does not include any such person, and

"(ii) any such person shall not be considered to have caused or contributed to any release or to have arranged for disposal, treatment, or transport of hazardous substances, except to the extent that there is a release of a hazardous substance that was primarily caused by activities of such person. This subparagraph shall not apply to any person potentially responsible under section 106 or 107 other than those persons associated solely with the provision of response action or ancillary services or equipment;".

COMMUNITY RELOCATION

SEC. 105. (a) The second sentence of paragraph (23) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting after "not otherwise provided for," the phrase "costs *of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare," and by striking out the semicolon at the end thereof and inserting in lieu thereof a period and the following: "In the case of a business located in an area of evacuation or relocation, the term may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and thirty days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, it may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974: Provided, That the costs of such assistance shall be paid from the Trust Fund;".*

(b) Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before "authorized by subsection (b) of this section," the phrase "for permanent relocation or".

OFFSITE REMEDIAL ACTION

SEC. 106. Section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking the last sentence of the para-

graph; striking the period after "welfare" the third time that word appears, and inserting a semicolon in lieu thereof, striking "or" before "contaminated materials" and inserting "and associated" in lieu thereof; and inserting before the period after "environment" the third time that word appears, the following: ", as well as the offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials".

ALTERNATIVE WATER SUPPLIES

SEC. 107. Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is amended by striking the period at the end of paragraph (30) and inserting in lieu thereof a semicolon; and by adding after new paragraph (33) the following new paragraph:

> *"(34) 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.".*

LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

SEC. 108. (a) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding the following new paragraph:

> *"( ) 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.".*

(b) Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended as follows:

(1) Subsection (a)(3) is amended by inserting "or incineration vessel" after "facility";

(2) Subsection (a)(4) is amended by inserting ", incineration vessels" after "facilities";

(3) Subparagraph (A) of subsection (c)(1) is amended by inserting ", other than an incineration vessel," after "vessel";

(4) Subparagraph (B) of subsection (c)(1) is amended by inserting "other than an incineration vessel," after "other vessel,";

(5) Subparagraph (D) of subsection (c)(1) is amended by inserting "any incineration vessel or" before "any facility".

(c) Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended as follows:

(1) Paragraph (1) is amended by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";

(2) Add a new paragraph to read as follows:

"(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.".

(d)(1) Section 105(g)(5) of the Marine Protection, Research and Sanctuaries Act of 1972 is amended by striking "The injunctive relief provided by this subsection shall not" and inserting in lieu thereof "Nothing in this Act, including the injunctive relief provided by this subsection, shall", and by inserting before the period ", including relief under title 42, United States Code, section 1983, or as a maritime tort".

(2) Section 107(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting ", under maritime tort law," after "with this section" and by inserting before the period "or the absence of any physical damage to the proprietary interest of the claimant".

IMPROVEMENTS IN NOTIFICATION AND PENALTIES

SEC. 109. (a) Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—

(1) inserting "(1)" after "immediately notify"; and

(2) inserting after "of such release" the following: ", and (2), in the case of any such release of a hazardous substance with a reportable quantity of one pound or less or any release of any other hazardous substance in a quantity determined by the President by regulation to potentially require emergency response, all State and local emergency response officials identified under any local contingency plan or otherwise likely to be affected by the release".

(b) Section 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—

(1) inserting after "appropriate agency of the United States Government" the following: "(or, in the case of a release to which subsection (a)(2) applies, any appropriate State or local emergency response official)"; and

(2) striking "$10,000 or imprisoned for not more than one year, or both." and inserting in lieu thereof "$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).".

(c) Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(g)(1) In addition to any other relief provided, whenever on the basis of any information available to the President the President finds that any person is in violation of subsection (a), (b), or (j) of this section the President may assess a civil penalty of not more than $10,000 for each failure to notify the appropriate agency. The penalty under this subsection shall increase to not more than $25,000 for a second violation by the same person, not more than $50,000 for a third violation by the same person, and not more than $75,000 for a fourth or subsequent violation by the same person.

"(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

"(3) In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting

from the violation, and such other matters as justice may require.

"(4) Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

"(5) The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served

upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(6) Action taken by the President pursuant to this subsection shall not affect or limit the President's authority to enforce any provision of this Act: Provided, however, That a failure to notify the appropriate agency which is penalized administratively under this subsection shall not be the subject of a criminal penalty under subsection (b) of this section.".

(d)(1) Section 103(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking "$20,000" and inserting "$25,000" in lieu thereof.

(2) Section 106(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking "$5,000" and inserting "$10,000" in lieu thereof.

HAZARDOUS SUBSTANCES INVENTORY

SEC. 110. Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, *as amended by this Act, is further amended by adding after "Notice, Penalties" in the title to section 103: ", Inventory, and Emergency Response". Section 103 is further amended by adding at the end thereof the following new subsection:*

"(h)(1) The requirements of this subsection shall apply to owners and operators of facilities that have ten or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufacture or process more than 200,000 pounds per year of a chemical substance listed pursuant to paragraph (2) or that use more than 2,000 pounds per year of a substance listed pursuant to paragraph (2). For purposes of this subsection,

"(A) The term 'manufacture' means to produce, prepare or compound a chemical substance.

"(B) The term 'process' means the preparation of a chemical substance, after its manufacture, for distribution in commerce—

"(i) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance,

"(ii) as part of an article containing the chemical substance.

"(C) The term 'use' means to use for purposes other than processing.

"(2)(A) Not later than July 1, 1986, the President shall publish a list of toxic chemical substances which, on the basis of available information and in the judgment of the President, are manufactured in or imported into the United States in aggregate quantities that exceed 500,000 pounds per year and, (i) based on epidemiological or other population studies, generally accepted laboratory tests, or structural analysis are known to cause or are suspected of causing in humans adverse acute health effects, cancer, birth defects, heritable genetic mutations, or other health effects such as reproductive dysfunction, neurological disorder, or behavioral abnormalities, or (ii) because of toxicity, persistence, or tendency to bioaccumulate in the environment, may cause adverse environmental effects. Unless and until such list is published, those specific chemical substances identified in section 101(14) of this Act shall constitute such list.

"(B) The President shall, as necessary, but no less often than every two years, review and revise the list required by this paragraph. Any person may petition the President to add a chemical substance to the list or to remove a chemical substance from the list.

"(C) The President may establish a quantity different from that established in paragraph (1), (2), or (3) for par-

ticular chemical substances, based on the toxicity, extent of usage and such other factors as the President deems appropriate. The President, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this subsection to the owners and operators of any particular facility that manufactures, processes, or uses a chemical substance listed under subparagraph (A) if the President determines that such action is warranted on the basis of toxicity of the substance, proximity to other facilities that release the substance or to population centers, the history of releases of such substances at such facility, or such other factors as the President deems appropriate.

"(3) The owners or operator of a facility subject to this subsection shall complete a Toxic Chemical Release Inventory Form as published under paragraph (4) for each chemical substance listed under paragraph (2) that was manufactured, processed, or used in quantities exceeding those established under paragraph (1) or, where applicable, subparagraph (2)(C), during the preceding calendar year at such facility. Such form shall be submitted on or before June 30, 1987, June 30, 1990, and June 30, 1993, and shall contain data reflecting releases during the preceding calendar year. If the President has not published the form required by paragraph (4) on or before December 31, 1986, owners and operators

required to submit information under this subsection shall do so by letter to the Administrator of the Environmental Protection Agency postmarked on or before June 30, 1987.

"(4)(A) Not later than June 1, 1986, the President shall publish a Toxic Chemicals Release Inventory Form. Such form shall provide for the name and location of and principal business activities at the facility and shall provide for submission of the following information for each listed substance known to be present at the facility—

"(i) the use or uses of the chemical substance at the facility;

"(ii) the annual quantity of the chemical substance transported to the facility, produced at the facility, consumed at the facility, and transported from the facility as waste or as a commercial product or byproduct or component or constituent of a commercial product or byproduct;

"(iii) the annual quantity of the chemical substance entering each environmental wastestream, including air, surface water, land, subsurface injection, and discharge to publicly owned treatment works; and

"(iv) for each wastestream, the waste treatment methods employed and the annual quantity of the chemical substance remaining in the wastestream after treatment.

"(B) For purposes of this paragraph, facility owners and operators may utilize readily available data collected pursuant to other State and Federal environmental laws, or, where such data are not readily available, reasonable estimates. Nothing in this subsection shall require the monitoring or actual measurement of quantities of substances or releases beyond that required under other authorities. In order to assure consistency, the President shall require that data be expressed in common units.

"(5) The Governor of each State shall designate an official or officials of the State to receive Toxic Chemical Release Inventory Forms. The facility owner or operator shall submit the form to such official or officials and to the President.

"(6) Subject to the provisions of paragraph (8), the President and the Governor shall make the information submitted pursuant to this subsection available to the public. The President and the Governor may charge reasonable fees to recover the cost of reproduction and mailing of data.

"(7) The President shall establish and maintain in a computer database a Naitonal Toxic Chemical Release Inventory based on data submitted under this section. EPA shall make these data accessible by computer telecommunication to any person on a cost-reimbursable user fee basis.

"(8)(A) The President may verify the data contained in the Toxic Chemicals Release Inventory Form using the authority of section 104(e) of this Act.

"(B) Information submitted under this subsection shall be treated as information submitted under section 104(e) and (other than data on the quantity and nature of any release and the identity of the chemical substance released) shall be subject to the provisions of section 104(e).

"(9) Any person who knowingly omits material information or makes any false material statement or representation in the Toxic Chemicals Release Inventory Form, shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than one year, or both.

"(10) Nothing in this subsection shall be construed to limit the ability of any State or locality to require submission of information related to hazardous substances, toxic chemical substances, pollutants or contaminants or other materials.

"(11) Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by this Act, is further amended by inserting 'and section 103' after 'under this section' in the first sentence.".

MATERIAL SAFETY DATA SHEETS AND EMERGENCY INVENTORY

SEC. 111. (a) Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting the following new subsections:

"(i) MATERIAL SAFETY DATA SHEETS AND EMERGENCY INVENTORY.—(1) Each owner or operator of a facility at which a hazardous chemical is produced, used, or stored shall file a Material Safety Data Sheet and Emergency Inventory form, as published under paragraph (3) of this subsection, not later than 180 days after enactment of the Superfund Improvement Act of 1985 for such hazardous chemical with the emergency planning committee established under section 105(d), for the area in which such facility is located and the Governor of the State in which the facility is located. In addition, the Emergency Inventory form shall be filed with the Environmental Protection Agency. If no emergency planning committee exists for the area in which a facility is located, the Governor of the State in which the facility is located shall designate appropriate area officials to receive the Material Safety Data Sheet and Emergency Inventory form. The Governor of the State in which a facility is located shall notify owners and operators of facilities required to comply with the provisions of this subsection.

"(2) Whenever a Material Safety Data Sheet is revised (as required under regulations under the Occupational Safety and Health Act of 1970) each such facility owner or operator shall file, as promptly as practicable, but not later than 90 days after such revision, the revised material safety data sheet. On an annual basis, or whenever a significant change occurs in the amount or presence of the hazardous chemical located at the facility, such owner or operator shall file a new Emergency Inventory form with the recipients designated in paragraph (1).

"(3) The President shall publish the Emergency Inventory form in the Federal Register within 90 days of the enactment of the Superfund Improvement Act of 1985. The Emergency Inventory Form shall provide for an estimate of the maximum amounts of the hazardous chemical present at the facility at any time during the preceding calendar year (in ranges), a brief description of the use or storage of the hazardous chemical at such facility, and the location of the hazardous chemical at such facility.

"(4) The Material Safety Data Sheets and Emergency Inventory forms shall be made available by the emergency planning committee to the public upon request. If no emergency planning committee exists for the area in which the facility is located, the Material Safety Data Sheets and Emergency Inventory forms shall be made available to the

public by the Governor of the State in which the facility is located upon request.

"(5) Nothing in this subsection shall be construed to limit the ability of any State or locality to require submission or distribution of information related to hazardous substances.

"(6) The President may establish quantities for hazardous chemicals below which no facility at which a hazardous chemical is produced, used, or stored shall be subject to the provisions of this subsection.

"(7) The President may order a facility owner or operator to comply with this subsection. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

"(j) EMERGENCY NOTIFICATION.—(1) The owner or operator of any facility at which a release occurs in an amount requiring a report under subsection (a) shall immediately provide notice of such release to the community emergency coordinator for the emergency planning committees, established pursuant to subsection 105(d), for any area likely to be affected by the release and to the Governor of any State

likely to be affected by the release. If an emergency plan prepared pursuant to section 105(d) does not exist, an operator shall instead provide notice to the emergency response authority of the affected jurisdictions.

"(2) Notice under paragraph (1) shall include (to the extent known at the time of the notice)—

"(A) the chemical name or identity of any hazardous substance involved in the release;

"(B) an estimate of the quantity of any such hazardous substance that was released into the environment;

"(C) the time and duration of the release;

"(D) the medium or media into which the release occurred;

"(E) the nature of the health of safety hazard posed by any substance released to the population as a whole and to sensitive populations, and the likely symptoms of exposure at different levels and types of exposure (unless such information is readily available to the emergency coordinator pursuant to the emergency plan);

"(F) proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the emergency coordinator pursuant to the emergency plan); and

"(G) the name and telephone number of the person or persons to be contacted for further information.

"(3) As soon as practicable after a release to which this subsection applies, such owner or operator shall provide a followup notice (or notices, as more information becomes available) updating the information required under paragraph (2), and including additional information with respect to—

"(A) actions taken to respond to and contain the release;

"(B) any known or anticipated acute or chronic health risks associated with the release, and

"(C) where appropriate, advice regarding medical attention necessary for exposed individuals.".

(b) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding at the end thereof the following new paragraphs:

"(35) 'hazardous chemical' means, for purposes of section 103(i), any substance which is treated as a 'hazardous chemical' pursuant to the Occupational Safety and Health Administration's hazard communication standard (codified in July 1985 in 29 CFR 1910.1200), except that the follow-

ing substances shall not be treated as a 'hazardous chemical' for such purposes:

"(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

"(B) any manufactured item that contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical under normal conditions of use;

"(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

"(D) any substance to the extent it is used in a laboratory, hospital, or medical facility under the direct supervision of a technically qualified individual;

"(E) any substance to the extent it is used in routine agricultural operations; and;

"(F) any substance to the extent it is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968.

"(36) 'Material Safety Data Sheet' means a material safety data sheet developed for a hazardous chemical pursuant to the hazard communication regulations promulgated

under the Occupational Safety and Health Act of 1970 (codified in July 1985 at 29 CFR 1910.1200).".

SCOPE OF PROGRAM

SEC. 112. (a) Section 104(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking that language between the word "environment" the third time it appears and the period and inserting in lieu thereof a period and the following: "The President shall give primary attention to those releases which may present a public health threat. The President may authorize the owner or operator of the vessel or facility from which the release or threat of release emanates, or any other responsible party, to perform the removal or remedial action if the President determines that such action will be done properly by the owner, operator, or responsible party".

(b) Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraphs:

"(3) The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

"(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

"(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

"(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(4) Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section the President may respond to any release or threat of release if in the President's discretion it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.".

STATUTORY LIMITS ON REMOVALS

SEC. 113. (a) Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "six months" and inserting "one year" in lieu thereof and inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with permanent remedy,".

(b) Section 104(c) of such Act (as amended by sections 117 and 118 of this Act) is amended by adding at the end thereof the following new paragraph:

"(8) Nothing in this Act shall limit the President in taking such action as may be necessary to assure con-

tinuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding or otherwise recontract for the performance of remedial action.".

STATE CREDIT

SEC. 114. (a) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "The President shall grant the State a credit against the share" and all that follows down through the end of such section 104(c)(3) and inserting in lieu thereof the following: "In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the President shall grant the State a credit for amounts expended or obligated by such State or by a political subdivision thereof after January 1, 1978, and before December 11, 1980, for any response action costs which are covered by section 111(a) (1) or (2) and which are incurred at a facility or release listed pursuant to section 105(8). Such credit shall have the effect of reducing the amount which the State would otherwise be required to pay in connection with assistance under this section.".

(b)(1) Section 104(d)(1) of the Comprenhensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new sentence: "For the purposes of the last sentence of subsection (c)(3) of this section, the President may enter into a contract or cooperative

agreement with a State under this paragraph under which such State will take response actions in connection with releases listed pursuant to section 105(8)(B), using non-Federal funds for such response actions, in advance of and without any obligation by the President of amounts from the Fund for such response actions.".

(2) Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding the following sentence: "The President shall grant the State a credit against the share of costs for which it is responsible under this paragraph for any reasonable, documented, direct out-of-pocket non-Federal funds expended or obligated by the State under a contract or cooperative agreement under the last sentence of subsection (d)(1).".

FUNDING OF REMEDIAL ACTION AT FACILITY OPERATED BY A STATE OR POLITICAL SUBDIVISION

SEC. 115. Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by amending section 104(c)(3)(C)(ii) to read as follows:

"(ii) 50 per centum (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release)

of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of subparagraph (C)(ii) of this paragraph, the term 'facility' does not include navigable waters or the beds underlying those waters."; and

(2) by adding at the end thereof the following: "In the case of any State which has paid, at any time after the date of the enactment of the Superfund Improvement Act of 1985, in excess of 10 per centum of the costs of remedial action at a facility owned but not operated by such State or by a political subdivision thereof, the President shall use money in the Fund to provide reimbursement to such State for the amount of such excess.".

SELECTION OF REMEDIAL ACTIONS

SEC. 116. Section 104(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(4)(A) The President shall select appropriate remedial actions determined to be necessary to carry out this section which, to the extent practicable, are in accordance with the national contingency plan and which provide for cost-effec-

tive response. In evaluating the cost-effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(B) Remedial actions in which treatment which significantly reduces the volume, toxicity or mobility of the hazardous substances is a principal element, are to be preferred over remedial actions not involving such treatment. The off-site transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action, where practicable treatment technologies are available.

"(C) Remedial actions selected under this paragraph or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants from the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

"(D) No permit shall be required under subtitle C of the Solid Waste Disposal Act, section 402 or 404 of the Clean Water Act, or section 10 of the Rivers and Harbors Act of

1899, for the portion of any removal or remedial action conducted pursuant to this Act entirely onsite: Provided, That any onsite treatment, storage, or disposal of hazardous substances, pollutants, or contaminants shall comply with the requirements of subparagraph (C).

"(E) Subject to the requirements of this paragraph, the President shall select the appropriate remedial action which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.".

STATE AND FEDERAL CONTRIBUTIONS TO OPERATION AND MAINTENANCE

SEC. 117. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraphs:

"(5) For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period up to five years after the construction or

installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

"(6) During any period after the availability of funds received by the Trust Fund under sections 4611 and 4661 of the Internal Revenue Code of 1954 or section 221(b)(2) or section 303(b) of this Act, the Federal share of the payment of costs for operation and maintenance pursuant to paragraph (3)(C)(i) or paragraph (5) of this subsection shall be from funds received by the Trust Fund under section 221(b)(1)(B).".

SITING OF HAZARDOUS WASTE FACILITIES

SEC. 118. Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraph:

"(7) Effective three years after the date of enactment of the Superfund Improvement Act of 1985, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities acceptable to the President and in compliance with the requirements of subtitle C of the Solid

Waste Disposal Act with adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the twenty-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed.".

COOPERATIVE AGREEMENTS

SEC. 119. Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking all of the existing paragraph (other than that added by this Act) and substituting the following:

"(d)(1) Where the President determines that a State or political subdivision has the capability to carry out any or all of the actions authorized in this section, the President may, in the discretion of the President and subject to such terms as the President may prescribe, enter into a contract or cooperative agreement and combine any existing cooperative agreements with such State or political subdivision (which may cover a specific facility or facilities) to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed from the Fund for the reasonable response costs and related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities

authorized by this Act. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.".

ACCESS AND INFORMATION GATHERING

SEC. 120. Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking "(2)" and inserting "(5)" in lieu thereof and by striking all of existing paragraph (1) and inserting in lieu thereof the following:

"(1) For the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title, any officer, employee, or representative of the President, duly designated by the President, or any duly designated officer, employee, or representative of a State, is authorized where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance—

"(A) to require any person who has or may have information relevant to (i) the identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility, or (ii) the nature or extent of a release or threatened release of a hazardous substance at or from a facility, to furnish, upon reasonable notice, information or documents relating to such matters. In addition, upon reasonable notice, such person either shall grant to appropriate representatives access

at all reasonable times to inspect all documents or records relating to such matters or shall copy and furnish to the representatives all such documents or records, at the option of such person;

"(B) to enter at reasonable times any establishment or other place or property (i) where hazardous substances are, may be, or have been generated, stored, treated, disposed of, or transported from, (ii) from which or to which hazardous substances have been or may have been released, (iii) where such release is or may be threatened, or (iv) where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title; and

"(C) to inspect and obtain samples from such establishment or other place or property or location of any suspected hazardous substance and to inspect and obtain samples of any containers or labeling for suspected hazardous substances. Each such inspection shall be completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested,

a portion of each such sample. If any analysis is made of such samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(2)(A) If consent is not granted regarding a request made by a duly designated officer, employee, or representative under paragraph (1), the President, upon such notice and an opportunity for consultation as is reasonably appropriate under the circumstances, may issue an order to such person directing compliance with the request, and the President may ask the Attorney General to commence a civil action to compel compliance.

"(B) In any civil action brought to obtain compliance with the order, the court shall, where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance: (i) in the case of interference with entry or inspection, enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection, unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or not in accordance with law; and (ii) in the case of information or document requests, enjoin interference with such information or document requests or direct compliance with orders to provide such information or documents,

unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or not in accordance with law. The court may assess a civil penalty not to exceed $10,000 against any person who unreasonably fails to comply with the provisions of paragraph (1) or an order issued pursuant to paragraph (2).

"(3) Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

"(4) Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the President who is properly cleared. Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable any grant of access to properly classified information under any provision of this Act, including section 103.

"(5) No person required to provide information or documents under this Act may claim that the information is entitled to protection under this section unless such claimant shows that—

"(A) the claimant has not disclosed the information to any other person, other than to an employee of the claimant or a person who is bound by a confidentiality agreement or to a person to whom the data has been supplied on a confidential basis in compliance with this Act, and the claimant has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures;

"(B) the information could not reasonably be discovered by anyone other than such persons in the absence of disclosure; and

"(C) knowledge of such information gives the claimant an opportunity to obtain a significant advantage over competitors who do not know such information and disclosure of the information is likely to cause substantial harm to the claimant's competitive position.

"(6) The following information with respect to any hazardous substance as defined in section 101(14) shall not be entitled to protection under this section:

"(A) The chemical name, CAS number, trade name, and common name of the hazardous substances.

"(B) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

"(C) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

"(D) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

"(E) The location of disposal of any waste stream.

"(F) The identity and quantity of any waste stream.

"(G) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

"(H) Any hydrogeologic or geologic data.

"(I) Any groundwater monitoring data.".

HEALTH-RELATED AUTHORITIES

SEC. 121. (a) Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(i)", by redesignating paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E), and by adding the following new paragraphs:

"(2) The Agency for Toxic Substances and Disease Registry shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances,

on the basis of available information, to the Environmental Protection Agency, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

"(3)(A) The Administrator shall perform a health assessment for each release, threatened release or facility on the National Priority List established under section 105. Such health assessment shall be completed not later than two years after the date of enactment of the Superfund Improvement Act of 1985 for each release, threatened release or facility proposed for inclusion on such list prior to such date of enactment or not later than one year after the date of proposal for inclusion on such list for each release, threatened release or facility proposed for inclusion on such list after such date of enactment. The Administrator shall also perform a health assessment for each facility for which one is required under section 3019 of the Solid Waste Disposal Act and, upon request of the Administrator of the Environmental Protection Agency or a State, for each facility subject to this Act or subtitle C of the Solid Waste Disposal Act, where there is sufficient data as to what hazardous substances are present in such facility.

"(B) The Administrator may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have

been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator providing such information and requesting a health assessment. If such a petition is submitted and the Administrator does not initiate a health assessment, the Administrator shall provide a written explanation of why a health assessment is not appropriate.

"(C) In determining sites at which to conduct health assessments under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subparagraph (E).

"(D) Any State or political subdivision carrying out an assessment shall report the results of the assessment to the Administrator of such Agency, and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of such Agency shall include the same recommendation in a report on the results of any assessment carried out directly by the

Agency, and shall issue periodic reports which include the results of all the assessments carried out under this paragraph.

"(E) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. The Administrator of the Agency for Toxic Substances and Disease Registry shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of the Environmental Protection

Agency. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

"(F) At the completion of each health assessment the Administrator shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, together with any recommendations for further action under this subsection or otherwise under this Act.

"(G) In any case in which a health assessment performed under this paragraph (including one required by section 3019 of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such releases.

"(4) Whenever, in the judgment of the Administrator, it is appropriate on the basis of the results of a health assessment, the Administrator shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed popula-

tion. Whenever in the judgment of the Administrator it is appropriate on the basis of the results of such pilot study, the Administrator shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects for the population exposed to hazardous substances in a release or suspected release.

"(5) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

"(6) The Administrator shall conduct a study, and report to the Congress within two years after the date of enactment of the Superfund Improvement Act of 1985, on the usefulness, costs, and potential implications of medical surveillance programs as a part of the health studies authorized by this section. Such study shall include, at a minimum, programs which identify diseases for which an exposed population is at excess risk, provide periodic medical testing to screen for such diseases in subgroups of the exposed population at highest risk, and provide for a mechanism to refer for

treatment individuals who are diagnosed as having such diseases.

"(7) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

"(A) provision of alternative water supplies, and

"(B) permanent or temporary relocation of individuals.

"(8) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President or the Administrator of the Environmental Protection Agency to exercise any authority vested in the President or such Administrator under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

"(9)(A) The Administrator shall, within six months after the date of enactment of the Superfund Improvement

Act of 1985, jointly with the Administrator of the Environmental Protection Agency, prepare a list of at least one hundred hazardous substances which the Administrator, in his sole discretion, determines are those posing the most significant potential threat to human health due to their common presence at the location of responses under section 104 or at facilities on the National Priority List or in releases to which a response under section 104 is under consideration. Within twenty-four months after enactment, the Administrator, in consultation with the Administrator of the Environmental Protection Agency, shall prepare a list of an additional one hundred or more such hazardous substances. The Administrator, in consultation with the Administrator of the Environmental Protection Agency, shall not less often than once every year thereafter add to such list other substances which are frequently so found or otherwise pose a potentially significant threat to human health by reason of their physical, chemical, or biological nature.

"(B) For each such hazardous substance listed pursuant to subparagraph (A), the Administrator (in consultation with the Administrator of the Environmental Protection Agency and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under

development), the Administrator, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Such program shall include, but not be limited to—

"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

"(iv) where there is a possibility of obtaining human data, the collection of such information.

"(C) In assessing the need to perform laboratory and other studies, as required by subparagraph (B), the Administrator shall consider—

"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by subparagraph (F) of this paragraph; and

"(iii) such other scientific and technical factors as the Administrator may determine are necessary for the effective implementation of this subsection.

"(D) In the development and implementation of any research program under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, in the discretion of the Administrator and consistent with such purpose, a research program under

this paragraph may be carried out using such programs of toxicological testing.

"(E) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Where this is not practical, the costs of such research programs should be borne by parties responsible for the release of the hazardous substance in question. To carry out such intention, the costs of conducting such a research program under this paragraph shall be deemed a cost of response for the purposes of recovery under section 107 of such costs from a party responsible for a release of such hazardous substance.

"(F) Based on all available information, including data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator shall prepare toxicological profiles sufficient to establish the likely effect on human health of each of the substances listed pursuant to subparagraph (A). Such profiles shall be revised and republished as necessary, but no less often than once every five years. Such profiles shall be provided to the States and made available to other interested parties.

"(10) All studies and results of research conducted under this subsection (other than health assessments) shall be

reported or adopted only after appropriate peer review. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of the Agency for Toxic Substances and Disease Registry or the Administrator of the Environmental Protection Agency, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protectioin Agency, as appropriate.

"(11) In the implementation of this subsection and other health-related authorities of this Act, the Administrator is authorized to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to toxic substances, through such means as the Administrator deems appropriate. Not later than two years after the date of enactment of the Superfund Improvement Act of 1985, the Admin-

istrator shall report to the Congress on the implementation of this paragraph.

"(12) For the purpose of implementing this subsection and other health-related authorities of this Act, the President shall provide adequate personnel to the Agency for Toxic Substances and Disease Registry, which shall be no fewer than one hundred full time equivalent employees.

"(13) The activities described in this subsection and section 111(c)(4) shall be carried out by the Agency for Toxic Substances and Disease Registry established by paragraph (1), either directly, or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of such Agency determines are capable of carrying out such activities. Such activities shall include the provision of consultations on health information, and the conduct of health assessments, including those required under section 3019 of the Solid Waste Disposal Act, health studies and registries.".

(b) Section 111(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(1) by inserting "in accordance with subsection (n) of this section and section 104(i)," after "(4)"; and

(2) by striking "epidemiologic studies" and inserting in lieu thereof "epidemiologic and laboratory studies and health assessments".

(c) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(n) For fiscal year 1986 and for each fiscal year thereafter, not less than 5 per centum of all sums appropriated from the Trust Fund, shall be directly available to the Agency for Toxic Substances and Disease Registry and used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i), including any such activities related to hazardous waste stored, treated, or disposed of at a facility having a permit under section 3005 of the Solid Waste Disposal Act. Any funds so made available which are not committed by the beginning of the fourth quarter of the fiscal year in which made available shall be made available in the Trust Fund for other purposes.".

(d) The last sentence of section 3019(b)(2) of the Solid Waste Disposal Act is amended to read as follows: "If so requested, the Administrator of such Agency shall conduct such health assessment.".

(e) Section 104(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by—

(1) striking "the Surgeon General of the United States" and inserting in lieu thereof "the Secretary of Health and Human Services";

(2) inserting in the second sentence thereof after "of said Agency" the following: "(hereinafter in this subsection referred to as 'the Administrator')";

(3) striking "chromosomal testing" in subparagraph (D) and inserting in lieu thereof "appropriate testing".

(f)(1) The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1986, submit to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information—

(A) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to

environmental sources of lead at concentrations sufficient to cause adverse health effects;

(B) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(C) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead and including but not limited to, diminution in intelligence, increases in morbidity and mortality; and

(D) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(2) Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(3) The costs of preparing and submitting the report required by this section shall be borne by the Hazardous Substances Response Fund.

(g) Section 111(c)(6) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by inserting at the end thereof the following: "Standards for health and safety protection of employees engaged in hazardous waste operations, including emergency

response, shall be promulgated by the Secretary of Labor, under the Occupational Safety and Health Act, not later than one year after enactment of the Superfund Improvement Act of 1985. The cost of training such employees, in an amount not to exceed $10,000,000 per year, shall be considered a permissible cost of the program authorized by this paragraph.".

EXPEDITED REMEDIAL ACTION AGREEMENT PROCEDURES

SEC. 122. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"( )(1) The President may enter into agreements pursuant to this subsection for the purpose of expediting remedial action with respect to a release or threatened release of a hazardous substance, in cases involving more than one potentially responsible party. As a matter of public policy, the President shall act to facilitate agreements under this Act, in order to protect human health and the environment by facilitating remedial action and to minimize litigation under this Act.

"(2)(A) At a date not later than that of the completion of the Remedial Investigation and Feasibility Study, the President shall provide all persons who are potentially responsible for a release or a threatened release—

"(i) the identity of any other potentially responsible parties who have been identified and served with notice of potential liability;

"(ii) a Nonbinding Preliminary Allocation of Responsiblity among all identifiable potentially responsible persons at a facility, including those parties which may be unknown, insolvent, or similarly unavailable. The allocation shall be based on the President's estimate and ranking of the volumetric contributions by such potentially responsible persons, and such additional factors, including, but not limited to, toxicity and mobility of the identified hazardous substances, as in the discretion of the President may be relevant to the preparation of such allocation;

"(iii) public information regarding successful agreements involving other facilities, as compiled beginning no later than January 1, 1987, and updated on a quarterly basis thereafter; and

"(iv) any other technical or scientific information, not otherwise privileged or attorney work product, which the President will utilize in determining whether to accept or reject an agreement offer under this section.

"(B) The information required by this paragraph (other than subparagraph (A)(ii)) shall be available in advance of

such notice upon the request of a potentially responsible person in accordance with procedures established by the President.

"(C) The provision of subsection (e) of this section regarding protection of confidential information shall apply to information subject to distribution under this paragraph.

"(3)(A) The procedures of this subsection shall apply to each case of remedial action with respect to a release or threatened release of a hazardous substance involving more than one potentially responsible party, unless in the discretion of the President use of these procedures is inappropriate because:

"(i) sufficient information to effectively use these procedures is not available;

"(ii) there is an urgent need for response and enforcement action that could not be met if these procedures were used;

"(iii) the number of responsible parties who are not de minimis is so small that use of the procedures would not expedite settlement; or

"(iv) an equitable settlement could be more expeditiously or effectively achieved through other settlement or other alternative dispute resolution procedures.

"(B) If the President declines under this paragraph to use the procedures set forth in this subsection, the President

shall notify potentially responsible parties at the facility of such decision and the reasons why use of such procedures is inappropriate.

"(4)(A) The President may not commence a remedial action under this section or take any action under section 106 until 180 days (or 90 days where the facility involves 9 or fewer potentially responsible parties) after providing notice of an intent to engage in the procedures under this subsection. Advance disclosure of information upon the request of a potentially responsible party under paragraph (2)(B) shall not commence the 180-day period (or 90 days where the facility involves 9 or fewer potentially responsible parties).

"(B) Nothing in this subsection shall limit the President's authority to undertake response action regarding a significant threat to public health or the environment within the negotiation period. The President may also commence any additional studies or investigations authorized under subsection (b) of this section, including remedial design, during the negotiation period.

"(5) To collect information necessary or appropriate for performing the allocation under paragraph (2)(A) of this subsection, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses

shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure or refusal of any person to obey any such subponea, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

"(6) the persons with whom the President reaches agreement under this subsection shall undertake or finance the remedial action and all previous costs of response, including operation and maintenance, or a discrete part of such remedial action, as provided by the agreement.

"(7)(A) The persons receiving notice under paragraph (2) of this subsection shall have 90 days (or 45 days in cases involving 9 or fewer potentially responsible parties) to make a proposal to the President for undertaking or financing the remedial action. In extraordinary cases, the President may grant a thirty-day extension of such period.

"(B) Where potentially responsible parties offer to provide payment or the undertaking of remedial action exceeding 50 per centum of the total shares as estimated by the President in the Nonbinding Preliminary Allocation of Responsibility, and such offer provides for response or costs of response for an amount equal to or greater than the cumulative

total, under the Nonbinding Preliminary Allocation of Responsibility, of the potentially responsible persons making the offer, such an offer will be considered to be in 'good faith' and the Federal district court in the district in which the facility is located may order the President to accept the offer.

"(C) The President's decision to reject an offer shall not be subject to judicial review, unless such offer is considered good faith under this paragraph. Where the President rejects an offer meeting such criteria, such rejection shall be in writing and shall be reviewable in the Federal district court in the district in which the facility is located. In such cases the President shall have the burden of persuasion to establish that the rejection was not unreasonable, in light of additional information received after the completion of the Nonbinding Preliminary Allocation of Responsibility. The record for such appeal shall consist of the written notice of rejection, the documents and evidence referred to therein, all comments and evidence submitted by others in response to the written notice of rejection, the President's rationale for rejection, as well as any information of which the court may take judicial notice.

"(D) Judicial review under this subsection shall be limited to the President's decision to reject the good-faith offer and shall not include any other issues relating to the selection or scope of the remedy, the computation of costs associated with response action, or the Nonbinding Preliminary Alloca-

tion of Responsibility. Remedial action shall not be delayed solely because of such review.

"(E) Where the President's decision to reject a good faith offer under this paragraph is found to be unreasonable, the Fund shall be liable to the potentially responsible persons who brought suit, for any legal fees and other reasonable costs incurred during such judicial review.

"(F) Where the good faith offer of potentially responsible parties would include the entire share of cleanup allocated to all potentially responsible parties under the Nonbinding Preliminary Allocation of Responsibility (other than the shares allocated to unknown, insolvent or similarly unavailable parties under section 106), such offer, if accepted, shall be granted a "bonus" from the Fund representing 10 per centum of the cost of response action. Such bonus shall not be available in the case of facilities where there are three or fewer potentially responsible parties.

"(8) If, as part of any agreement, the President will be carrying out remedial action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such funds for purposes of carrying out the agreement.

"(9) If an additional responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or

threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(10) The costs incurred by the President in producing the Nonbinding Preliminary Allocation of Responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President under this section. Where an offer under this section is not accepted, such costs shall be considered costs of response.

"(11) The Nonbinding Preliminary Allocation of Responsibility shall not be admissible as evidence in any proceeding under section 106 or 107 of this Act, and no court shall have jurisdiction to review the Nonbinding Preliminary Allocation of Responsibility in any action under section 106 or 107. The Nonbinding Preliminary Allocation of Responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

"(12)(A) If a good-faith proposal for undertaking or financing a remedial action has not been submitted within 90 days (or 45 days in cases involving 9 or fewer potentially responsible parties) of the provision of notice pursuant to this subsection, the President may thereafter commence a remedial action under this section or take an action against any person under section 106 of this Act.

"(B) If an agreement has been entered into under this subsection, the President may take any action under section 106 against any person who is not a party to the agreement, once the 90-day period (or 45 days in cases involving 9 or fewer potentially responsible parties) for submitting a proposal has expired.

"(13) Whenever the President has entered into an agreement for remedial action under this subsection, the liability under this Act of each party to the agreement, including any future liability arising from the release or threatened release that is the subject of the agreement, shall be limited as provided in the agreement.

"(14) Nothing in this subsection shall be construed to affect:

"(A) the liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement; or

"(B) the authority of the President to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

"(15) The liability of any party to an agreement under this subsection for contribution shall be limited as provided in section 107(1)(3).

"(16) Whenever the President enters into an agreement under this subsection, the agreement, following approval by

the Attorney General, shall be entered as a consent decree under section 106 of this Act. Any party failing to comply with an agreement shall be liable for a penalty not to exceed $25,000 for each day during which such failure continues.".

PUBLIC PARTICIPATION

SEC. 123. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(j) Before selection of appropriate remedial action to be undertaken by the United States or a State or before entering into a covenant not to sue or to forebear from suit or otherwise settle or dispose of a claim arising under this Act, notice of such proposed action and an opportunity for a public meeting in the affected area, as well as a reasonable opportunity to comment, shall be afforded to the public prior to final adoption or entry. Notice shall be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposal and alternative proposals considered.".

LOVE CANAL PROPERTY ACQUISITION

SEC. 124. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection as follows:

"(k) In determining priorities among releases and threatened releases under the National Contingency Plan and in carrying out remedial action under this section, the

Administrator shall establish a high priority for the acquisition of all properties (including nonowner occupied residential, commerical, public, religious, and vacant properties) in the area in which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner occupied residences have been acquired pursuant to such determination.".

ADMINISTRATIVE ORDERS FOR SECTION 104(b) ACTIONS

SEC. 125. Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection as follows:

"(l)(1) If the President determines that one or more responsible parties will properly carry out action under subsection (b) of this section, the President may enter into a consent administrative order with such party or parties for that purpose.

"(2) The United States district court for the district in which the release has occurred or threatens to occur shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $10,000 for each day in which such violation occurs or such failure to comply continues.".

NATIONAL CONTINGENCY PLAN—HAZARD RANKING SYSTEM

SEC. 126. Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(a)" immedately following "105." and by adding the following at the end thereof:

"(b) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Improvement Act of 1985 relating to the selection of remedial action.

"(c) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the

environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985 and such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue to full force and effect.

"(d)(1) This subsection applies to facilities—

"(A) which as of July 1, 1985, were not included on, or proposed for inclusion on, the National Priorities List; and

"(B) at which special study wastes described in section 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act or any leachate from abandoned mine sites are present, including any such facility from which there has been a release of a special study waste or leachate, except that this subsection shall not apply to a facility which does not involve the presence of any such waste or leachate in any significant quantity.

"(2) Pending revision of the hazard ranking system under subsection (c), no facility to which this subsection applies may be added to the National Priorities List unless the

Administrator makes the following specific findings, based on facility-specific data—

"(A) as to the status of studies by the Environmental Protection Agency on such waste under the Solid Waste Disposal Act and of regulation of such waste under subtitle C thereof;

"(B) as to the extent to which the hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility;

"(C) as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or release from such facility, the extent of or potential for release of such hazardous constituents, and the degree of risk to human health or the environment posed by the release of such hazardous constituents at such facility: Provided, That, the findings in this subparagraph shall be based on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility; and,

"(D) that based on the findings in subparagraph (C), the degree of risk to human health or the environment posed by such facility is equal to or greater than the risk posed by facilities at which no special study

waste is present and which are proposed for inclusion on the National Priorities List.

A person may be subject to liability under section 106 or 107 under this Act for any waste or release referred to in paragraph (1) of this subsection at any facility to which this subsection applies only if the specific findings required under this paragraph with respect to that facility have been made and such suit against such person supports each specific finding with appropriate facility-specific data. This paragraph shall not apply to any facility that is included on the National Priorities List pursuant to a hazard ranking system revised in accordance with subsection (c) so as to incorporate the factors identified in subparagraph (C) and (D) of this paragraph.

"(3) Following the Administrator's completion of the applicable special study waste required under section 8002 (f), (m), (n), (o), or (p) of the Solid Waste Disposal Act, and the determination required under section 3001(b)(3)(C) or, in the case of a special study waste described in section 3001(b)(2)(B), the authorization of regulations by Congress pursuant to section 3001(b)(2)(B)), of such Act, if a special study waste is not a hazardous waste listed under section 3001 of the Solid Waste Disposal Act, the waste stream, or one of the constituents thereof, may not be deemed to be a hazardous substance unless such waste, at the facility in

question, has one of the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act.

"(4) Nothing in this subsection shall be construed to limit the authority of the Administrator to remove any facility which as of July 1, 1985, is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

"(5) Nothing in this subsection shall be construed to limit the authority of the Administrator or the Attorney General from seeking abatement of an imminent and substantial endangerment under section 106(a).".

EMERGENCY PLANNING

SEC. 127. Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(d) EMERGENCY PLANNING.—(1)(A) The President shall publish a list of extremely hazardous substances, taking into account the toxicity, reactivity, volatility, flammability, and usage of such substances. For the purposes of the preceding sentence, the term 'toxicity' shall include any acute or chronic health effect which may result from an acute exposure to the substance. The President shall review, and modify as necessary, such list not less often than every two years. Such list shall identify each extremely hazardous substance

and shall establish a quantity of each such substance which, if released at a facility, would likely pose an imminent and substantial endangerment to the public health or to the environment. Facilities that have present such a quantity of such a substance shall notify the Governor in accordance with paragraph (2)(A).

"(B) Within 30 days after enactment of the Superfund Improvement Act of 1985, the President shall publish an initial list of substances and quantities as described in subparagraph (A), which shall be the same as substances and quantities listed by the Council of the European Communities in its 'Council Directive of June 24, 1982, on the Major Accident Hazards of Certain Industrial Activities, Annex III,' published in the Official Journal of the European Communities, August 5, 1982.

"(2)(A) Not later than 90 days after the date of enactment of the Superfund Improvement Act of 1985, or not later than 60 days after any revision of the list, each owner or operator of a facility (other than motor vehicles, rolling stock, or aircraft) that has present a quanitity of a substance that requires notification under paragraph (1) shall notify the Governor of the State in which such facilitly is located that such facility is subject to the requirements of this subsection. The Governor may designate additional facilities that shall be subject to the provisions of this subsection.

"(B) Not later than 180 days after the date of enactment of the Superfund Improvement Act of 1985, the Governor of each State shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the Governor may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the Governors of each potentially affected State may designate emergency planning districts and emergency planning committees by agreement. In making such designation, the Governor shall indicate which facilities designated under subparagraph (A) are within such emergency planning district.

"(C) Not later than 210 days after such date of enactment, the Governor shall appoint members of an emergency planning committee for each emergency planning district. Each Committee shall include representatives of the public, appropriate State and local organizations, and owners and operators of facilities designated under subparagraph (A). In making such appointments, the Governor shall consider persons who would be expected to play a major role in the event of a release of an extremely hazardous substance, such as elected officials, law enforcement and firefighting personnel, public health, medical, hospital, and environmental protection personnel, civil defense personnel, transportation offi-

cials, and representatives of broadcast and print media. Interested persons may petition the Governor to modify the membership of such committee. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan.

"(D) Each emergency planning committee shall complete preparation of emergency plans in accordance with this subsection not later than two years after such date of enactment. The committee shall review such plan at least annually, or as changed circumstances in the community or at any facility may require.

"(E) Each emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required, and the means for providing such additional resources.

"(F) Each emergency plan shall include (but is not limited to)—

"(i) identification of facilities designated pursuant to subparagraph (A) that are within the emergency

planning district, and identification of routes likely to be used for the transportation of substances listed pursuant to subparagraph (A);

"'(ii) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances;

"(iii) designation of a community emergency coordinator and a facility emergency coordinator, who shall make determinations necessary to implement the plan;

"(iv) procedures providing reliable, effective, and timely notification by the facility emergency coordinator and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements under section 103(j));

"(v) methods for determining the occurrence of a release, and the area or population likely to be affected by such release;

"(vi) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

"(vii) training programs, including schedules for training of local emergency response and medical personnel; and

"(viii) methods and schedules for exercising such plan.

"(G) The owner or operator of each facility designated pursuant to subparagraph (A) shall—

"(i) within 210 days after such date of enactment, notify the emergency planning committee for the emergency planning district in which such facility is located that a facility representative will participate in the emergency planning process,

"(ii) promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur; and

"(iii) upon request from the emergency planning committee, promptly provide information to such committee necessary for developing and implementing the emergency plan.

"(H) The National Response Team shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than 150 days after such date of enactment.

"(I) The Regional Response Teams shall review and comment upon such emergency plans or other issues related to preparation, implementation, or exercise of such plan upon

request of the emergency planning committee. Such review shall not delay implementation of such plans.

"(3) The President may order a facility owner or operator to comply with paragraphs (2) (A) and (G) of this subsection. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.".

NATIONAL CONTINGENCY PLAN

SEC. 128. (a) Section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as redesignated by this Act, is amended by striking "at least four hundred of" when it appears.

(b) Section 105(8)(B) is further amended by striking the phrase "at least" following the word "facilities" the second time it appears and by inserting "A State shall be allowed to designate its highest priority facility only once." after the third full sentence thereof.

DE MINIMIS CONTRIBUTOR SETTLEMENT PROVISIONS

SEC. 129. Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding the following new subsection:

"(d) The President shall consider, but may accept or reject, good-faith offers of settlement under this section or sec-

tion 107 from any person potentially liable under such sections, and in the discretion of the President is authorized to accept such offers if the offer does not constitute a substantial portion of the costs of response, if—

"(1) the amount of the hazardous substances contributed to the release by the party making the offer, and

"(2) the toxic or other hazardous effects of the substances contributed to the release by the party making the offer are minimal in comparison with contributions to the release by other potentially responsible parties. For the purposes of this subsection, a good faith offer is one which is reasonable based on the objective evidence. Not later than March 1, 1986, the President shall publish guidance documents defining what would constitute de minimis contributions under this section.".

MIXED FUNDING

SEC. 130. Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(c) The President may use monies from the Fund to pay for that portion of the response costs (or of a remedy to be performed jointly with responsible parties) which is attributable to the contribution of hazardous substances from parties

who are determined by the President, on the record, to be unknown or insolvent, or similarly unavailable.".

RELEASES FROM LIABILITY

SEC. 131. Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(e)(1) The President may provide any person with a covenant not to sue concerning any future liability under this Act resulting from a future release or threatened release of hazardous substances addressed by a remedial action, whether that action is onsite or offsite, if this covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act, and—

"(A) the person is in full compliance with an administrative order or consent decree under this section for response to the release or threatened release of hazardous substances, and

"(B) this response action has been approved by the President.

"(2)(A) In assessing the appropriateness of a covenant not to sue, the President shall consider whether the covenant is in the public interest, taking into account whether the cleanup will be done, in whole or in significant part, by the responsible parties themselves. To the extent that private parties perform the cleanup and are in full compliance with an administrative order or consent decree approved by the Presi-

dent, such parties shall receive a more expansive covenant not to sue than if the cleanup were performed entirely by the Government. However, this section is not intended to limit the President's discretion in settling with de minimis contributors under subsection (d) of this section.

"(B) Factors to be taken into account in the President's consideration of the public interest under this subsection include, but are not limited to, the following:

"(i) the effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility;

"(ii) the nature of the risks remaining at the facility after completion of the remedy;

"(iii) the extent to which performance standards are included in the order of decree;

"(iv) the extent to which the response action provides a complete remedy for the facility, including the elimination of the hazardous nature of the substances at the facility; and

"(v) whether the Fund or other sources of funding, including other responsible parties, would be available for any additional response actions that may become necessary for the facility.

"(3) In the case of remedial actions undertaken jointly by the President and responsible parties, any governmental

entity taking part in such remedial action shall be subject to future liability as a private responsible party. Any future response actions arising at the same facility, and which give rise to further liability, shall obligate the Fund to the extent of the obligation of the President under the earlier remedial action responsibility. The President's contribution to such future response actions may be made through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

"(4) The President is authorized to include any provision allowing future enforcement action under this section or section 107 that in the discretion of the President is necessary and appropriate to assure protection of public health, welfare, and the environment.

"(5) In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a convenant not to sue, for the portion of remedial action—

"(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not in-

clude such offsite disposition and has thereafter required offsite disposition; or

"(B) which involves the treatment of hazardous substances so as to destroy, eliminate or permanently immobilize the hazardous constituents of such substances, such that in the judgment of the President the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability under this Act for a future release or threatened release of hazardous substances from such facility, and a person provided such convenant not to sue shall not be liable under section 106 or 107 with respect to such release or threatened release at any future time. The President is authorized to include in such convenant not to sue a provision allowing future enforcement action under *this section or section 107, in the case of any fraud or misrepresentation by such person.*

"(6) Any convenant not to sue provided by the President under this subsection shall be effective only when approved by a Federal District Court, upon the application of the President, after consideration of the conditions and factors specified in this subsection.".

FOREIGN VESSELS

SEC. 132. Section 107(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "(otherwise subject to the jurisdiction of the United States)".

STATE AND LOCAL GOVERNMENT LIABILITY

SEC. 133. (a) Section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(d)" and adding the following new language:

"(2) No State or local government shall be liable under this title for costs or damages as a result of non-negligent actions taken in response to an emergency created by the release or threatened release of a hazardous substance, pollutant, or contaminant generated by or from a facility owned by another person.".

(b) Section 101(20) is amended by inserting immediately before the semicolon at the end of clause (A) the following: "nor does such term include a unit of State or local govern-

ment which acquired ownership or control involuntarily through bankruptcy, foreclosure, tax delinquency, abandonment, or similar means of alienation".

(c) Section 101(20) is further amended by deleting clause (iii) and substituting the following:

"(iii) in the case of any facility, title, or control of which was conveyed due to abandonment, bankruptcy, foreclosure, tax delinquency or similar means to a unit of State or local government, any person who owned, operated or otherwise controlled activities at such facility immediately beforehand.".

NATURAL RESOURCE DAMAGE CLAIMS

SEC. 134. (a) Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting "(1)" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2)(A) The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess

damages for those natural resources under a State's trusteeship.

"(B) The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship.

"(C) Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.

"(D) The President shall promulgate the regulations required under section 301 of this Act not later than six months after the enactment of the Superfund Improvement Act of 1985.".

(b) Section 111(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "No money in the Fund

may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.".

(c) Section 111(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is repealed.

CONTRIBUTION AND PARTIES TO LITIGATION

SEC. 135. Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding a new subsection to read as follows:

"(l)(1) Any person may seek contribution from any other person who is liable or potentially liable under subsection (a), during or following any civil action under section 106 or under such subsection (a). Such claims shall be brought in accordance with section 113 and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contributions claims, the court shall allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution or indemnification in the absence of a civil action under section 106 or this section.

"(2) When a person has resolved its liability to the United States or a State in a judicially approved good faith

settlement, such person shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others to the extent of any amount stipulated by the settlement.

"(3) Where the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in a good faith settlement, the United States or the State may bring an action against any person who has not so resolved its liability. A person that has resolved its liability to the United States or a State in a good faith settlement may, where appropriate, maintain an action for contribution or indemnification against any person that was not a party to the settlement. In any action under this paragraph, the rights of any person that has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be brought in accordance with section 113, and shall be governed by Federal law.".

FEDERAL LIEN

SEC. 136. Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(m)(1) All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property belonging to such person that are subject to or affected by a removal or remedial action.

"(2) The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act and shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113(e).

"(3) The lien imposed by this subsection shall not be valid as against any purchaser, holder of a security interest, or judgment lien creditor until notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided in sec-

tion 6323(h) of title 26, United States Code. This paragraph does not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

"(4) The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.".

DIRECT ACTION

SEC. 137. (a) Sections 108 (c) and (d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(c) In any case where a person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or where with reasonable diligence jurisdiction in the Federal Courts cannot be obtained over a person liable under section 107 likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility for that person. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and de-

fenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) The total liability under this Act of any guarantor shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument provided by the guarantor to the person liable under section 107: Provided, That nothing in the subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to the person liable under section 107 including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim: Provided further, That nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under section 107 or 111 of the Act or other applicable law.".

(b) Section 108(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating require-

ments under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

LEAD CONTAMINATION

SEC. 138. Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended by this Act) is amended by adding at the end thereof the following new paragraph:

"(8) payment of the cost, not to exceed $15,000,000, of a pilot program for the removal of lead-contaminated soil in one to three different metropolitan areas.".

TECHNICAL ASSISTANCE GRANTS

SEC. 139. Section 111(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is further amended by adding the following new paragraph:

"(   ) Subject to such amounts as are provided in appropriation Acts, the costs of a program of technical assistance grants, in accordance with rules promulgated by the President, to community organizations or groups of individuals potentially affected by a release or threatened release at any facility listed on the National Priorities List, not to exceed $75,000 per facility. Such grants may be used to

obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.".

FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES

SEC. 140. Section 111(e)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting before the period a colon and the following: "Provided, That money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

STATE MATCHING GRANTS

SEC. 141. Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(o)(1) Notwithstanding any other provision of this section, the President is authorized to provide up to $1,000,000 per year to each State, out of the Fund, to be matched by an equivalent expenditure by such State, up to a cumulative national total from the Fund of $50,000,000 per year, for State-administered and designed programs for the cleanup

and stabilization of facilities contaminated by releases of hazardous substances.

"(2) The following conditions shall be attached to monies provided by the Fund as State Matching Grants—

"(A) no monies may be expended for any litigation-related expenses;

"(B) there shall be no liability of the Fund or the United States (including third party claims of any type) arising from such response action;

"(C) monies expended under this subsection may be used at any facility, as determined by the State, in consultation with the President, to be appropriate; and

"(D) facilities selected for cleanup with such monies shall be facilities for which there is no reasonable likelihood of recovery of costs under existing authority.

"(3) In determining whether a substance is a hazardous substance, pollutant, or contaminant for purposes of this subsection, the exclusion of petroleum under the last sentences of sections 101(14) and 104(a)(2) shall not apply.".

STATUTE OF LIMITATIONS

SEC. 142. (a) Section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking subsection (d) and relettering the following subsection.

(b) Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(e)(1) No claim may be presented, nor may any action be commenced under this title—

"(A) for the cost of response, unless that claim is presented or action commenced within six years after the date of completion of the response action: Provided, however, That within the limitation period set out herein a State or the United States may commence an action under this title for recovery of any cost or costs at any time after such cost or costs have been incurred;

"(B) for damages under subparagraph (C) of section 107(a), unless that claim is presented or action commenced within six years after the date on which final regulations are promulgated under section 301(c) or within three years after the date of the discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later; or

"(C) for any other damages, unless that claim is presented or action commenced within three years after the date of discovery of the loss and its connection with the release in question or the date of enactment of this

Act, whichever is later: Provided, however, That the time limitations contained in this paragraph shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him nor against an Indian tribe until the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this subsection. No claim may be presented or action be commenced under this subparagraph for any damages, if prior to the date of enactment of the Superfund Improvement Act of 1985, the statute of limitations which would otherwise apply under this paragraph has expired.

"(2) No action for contribution may be commenced under section 107 more than three years after the date of entry of judgment or the date of the good-faith settlement.

"(3) No action based on rights subrogated pursuant to section 112 by reason of payment of a claim may be commenced under this title more than three years after the date of payment of such claim.".

JUDICIAL REVIEW

SEC. 143. Section 113(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"SEC. 113. (a)(1) Review of any regulation promulgated under this Act may be had upon application by any interested person in the Circuit Court of Appeals of the United States for the District of Columbia or in any United States court of appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation. Any such application shall be made within one hundred and twenty days from the date of promulgation of such regulation, or after such date only if such application is based solely on grounds which arose after such one hundred and twentieth day. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

"(2)(A) If applications for review of the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of the first such application more than thirty days before receiving written notice of the filing of the second application, then the record shall be filed in that court in which the first application was filed. If applications for review of

the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the President shall promptly advise in writing the judicial panel on multidistrict litigation authorized by section 1407 of title 28, United States Code, that applications have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the President, the judicial panel on multidistrict litigation thereupon shall select the court in which the record shall be filed from among those identified by the President. Upon notification of such selection, the President shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the President, the record shall be filed in the United States court of appeals which remanded such action.

"(B) Where applications have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such

courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed may postpone the effective date of the agency action until fifteen days after the judicial panel on multidistrict litigation has selected the court in which the record shall be filed.

"(C) Any court in which an application with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such application to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.".

PRE-ENFORCEMENT REVIEW

SEC. 144. (a) Section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking the word "subsection" and inserting in lieu thereof the words "subsections," and inserting "and (f)" after "(a)".

(b) Section 113 is further amended by adding at the end thereof the following new subsections:

"(f) No court shall have jurisdiction to review any challenges to response action selected under section 104 or any order issued under section 104(b), or to review any order issued under section 106(a), in any action other than (1) an

action under section 107 to recover response costs or damages or for contribution or indemnification; (2) an action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order; or (3) an action for reimbursement under section 106(b)(2).

"(g) In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. The objections which may be raised in any such judicial action under section 106 or 107 must be based upon the comments received and the evidence contained in the record. In considering such objections, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was not reasonably justified under the criteria set forth in the national contingency plan, including the cost effectiveness of such action, or that the decision was otherwise not in accordance with law. If the court finds that the President's decision in selecting the response action was not reasonably justified under the criteria set forth in the national contingency plan, including the cost effectiveness of such action, or that the decision was otherwise not in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent

with the national contingency plan. In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(h) The President shall promulgate regulations in accordance with chapter 5 of title 5, United States Code, commonly known as the Administrative Procedure Act, establishing procedures for the appropriate participation of interested persons in the development of the adminisrative record on which judicial review of the reponse actions will be based. For remedial actions, such regulations shall include procedures for providing, before adoption of any plan for remedial action to be undertaken by the United States or a State or any other person under section 104 or section 106 of this Act—

"(1) notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered;

"(2) a reasonable opportunity to comment and provide information regarding the plan;

"(3) an opportunity for a public meeting in the affected area;

"(4) a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under such procedures; and

"(5) agency support for the basis and purpose of the selected action.

The administrative record shall include the items developed and received pursuant to the procedures established under this subsection.".

(c) Section 106(b) of such Act is amended by—

(1) inserting "(1)" after "(b)";

(2) striking out "who willfully" and inserting in lieu thereof "who, without sufficient cause, willfully"; and

(3) adding at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within sixty days of completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

"(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may

within thirty days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

"(C) To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order: Provided, however, That a petitioner who is liable for response costs under section 107(a) may recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was not resonably justified under the criteria set forth in the national contingency plan, including the requirement for cost effectiveness of such action, or was otherwise not in accordance with law. In any such case, the petitioner shall be awarded all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be not reasonably justified under the criteria set forth in the national contingency plan, including the requirement for cost effectiveness of such action, or was otherwise not in accordance with law.".

NATIONWIDE SERVICE OF PROCESS

SEC. 145. Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, *as amended by this Act, is amended by adding the following new subsection:*

"(h) In any action by the United States under section 104, 106, or 107, process may be served in any district where the defendant is found, or resides, or transacts business, or has appointed an agent for the service of process.

"(i) Any litigation relating to permits of the Administrator issued pursuant to the Clean Air Act, the Clean Water Act, the Solid Waste Disposal Act, the Toxic Substances Control Act, and this Act, and for which such permitted facilities would guarantee the availability of treatment, incineration, or disposal capacity of at least 25 per centum for Superfund wastes shall be afforded priority consideration over other civil litigation by the respective United States Court of Appeals having jurisdiction over the litigation. It shall be the duty of the Court of Appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the extent possible the disposition of any matter covered by this subsection.".

NOTICE OF COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ACTIONS

SEC. 146. Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new subsection:

"(i) Notice of Actions.—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator.".

PREEMPTION

Sec. 147. Section 114 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking subsection (c) and relettering the following subsection accordingly.

FEDERAL FACILITIES CONCURRENCE

Sec. 148. Section 115 of the Comprehensive Environmental, Compensation, and Liability Act of 1980 is amended by inserting before the period at the end thereof a colon and the following: "Provided, That with respect to a Federal facility or activity for which such duties or powers are delegated to an officer, employee or representative of the department, agency or instrumentality which owns or operates such facility or conducts such activity, unless the Administrator has entered into a memorandum of understanding with the head of such department, agency or instrumentality, the concurrence of the Administrator (and the responsible State official where a cooperative agreement has been entered into) shall be required for the selection of appropriate remedial action and the administrative order authorities of section 106(a) are hereby delegated to the Administrator".

FEDERAL FACILITIES COMPLIANCE

SEC. 149. Title I of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96–510) is amended by adding at the end thereof the following new section:

"FEDERAL FACILITIES

"SEC. 117. (a) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket which shall contain all information submitted under section 3016 of the Solid Waste Disposal Act regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility. Such docket shall be available for public inspection at reasonable times. Three months after establishment of the docket and every three months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding three-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

"(b) ASSESSMENT AND EVALUATION.—Not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility for which information is required under section 3016 of the Solid Waste Disposal Act. Following such preliminary assessment, the Administrator shall where appropriate—

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases.

"(2) include such facilities on the National Priorities List maintained under such plan. Such evaluation and listing shall be completed not later than twenty months after such date of enactment.

"(c) RIFS AND INTERAGENCY AGREEMENT.—

"(1) RIFS.—Not later than six months after the inclusion of any facility on the National Priorities List (NPL), or within six months of the enactment of the Superfund Improvement Act of 1985, whichever is later, the department, agency, or instrumentality which owns or operates such facility shall enter into an agreement with the Administrator and appropriate State authorities under which such department, agency, or instrumentality will carry out a remedial investigation

and feasibility study for such facility. The agreement shall provide for a timetable and deadlines for commencement and expeditious completion of such investigation and study.

"(2) INTERAGENCY AGREEMENT.—(A) Within six months after completion of each such remedial investigation and feasibility study, the Administrator shall review the results of such investigation and study and shall enter into an interagency agreement with the head of the department, agency, or instrumentality concerned for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. All such intergency agreements shall comply with the public participation requirements of section 104(j). Such agreement shall require that substantial continuous physical onsite remedial action is commenced at each facility which is the subject of such an agreement within twelve months after the completion of remedial design.

"(B) Each interagency agreement under this paragraph shall include, but shall not be limited to—

"(i) a review of alternative remedial actions and selection of a remedial action plan by the Administrator;

"(ii) a schedule for the completion of each such remedial action; and

"(iii) arrangements for long term operation and maintenance of the facility.

"(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable from the date the interagency agreement was entered into. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare and the environment and identify the specific consequences of failure to begin and complete remedial action.

"(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to—

"(A) a report on the progress in reaching interagency agreements under this section;

"(B) the specific cost estimates and budgetary proposals involved in each interagency agreement;

"(C) a brief summary of the public comments regarding each proposed interagency agreement; and

"(D) a description of the instances in which no agreement was reached.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affect States.

"(d) ACTION BY OTHER PARTIES.—If the Administrator in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that a remedial investigation and feasibility study or

remedial action will be done properly at the federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of subsection (c), the Administrator may enter into an agreement with such party providing for assumption of the responsibilities set forth in these paragraphs. Following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

"(e) STATE AND LOCAL PARTICIPATION.—

"(1) the Administrator shall consult with the relvant officials of the State and locality in which the facility is located and shall consider their views in selecting the remedial action to be carried out at the facility.

"(2) Each department, agency, or instrumentality responsible for compliance with this section shall afford to relevent State and local officials the opportunity to participate in the planning and formulation of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans.

"(f) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may

be transferred, by Executive order of the President or otherwise, to any other office or employee of the United States or to any other person.

"(g) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priority List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned and operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities, except for any requirements relating to bonding, insurance, or financial responsibility. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act. The President may exempt any site or facility of any department, agency, or instrumentality in the Executive branch from compliance with any such guidelines, rules, regulations or criteria if the President determines it to be in the paramount interest of the United States to do so. No

such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with the reason for granting each such exemption.

"(h) FEDERAL AGENCY SETTLEMENTS.—The head of each department, agency, or instrumentality or his designee may consider, compromise, and settle any claim or demand under this Act arising out of activities of his agency, in accordance with regulations prescribed by the Attorney General. Any award, compromise, or settlement in excess of $25,000 shall be made only with the prior written approval of the Attorney General or his designee. Any such award, compromise, or settlement shall be paid by the agency concerned out of appropriations available to that agency.".

CITIZEN SUITS

SEC. 150. Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is *amended by adding at the end thereof the following new section:*

"CITIZEN SUITS

"SEC. 118. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on such person's behalf—

"(1) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment to the Constitution, who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

"(2) against the President for failure to perform any act or duty under this Act which is not discretionary with the President.

Any action under this subsection shall be brought in the district court for the district in which the alleged violation occurred. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such requirement, to order the President to perform such act or duty, as the case may be, or to order such person in violation, of any standard, regulation, condition, requirement, or order to take such action as may be necessary to correct the violation or to apply appropriate civil penalties under this Act: Provided, however, That no district court *shall have jurisdiction under this section to review any challenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a).*

"(b) No action may be commenced under subsection (a) of this section (1) prior to ninety days after the plaintiff has given notice of the violation (A) to the President; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of a standard, regulation, condition, requirement, or order; or (2) if the President or State has commenced and is diligently prosecuting an action under this Act or the Solid Waste Disposal Act to require compliance with such standard, regulation, condition, requirement, or order.

"(c) In any action commenced by the President or a State, under this Act or under the Solid Waste Disposal Act, in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and such applicant is so situated that the disposition of the action may, as a practical matter, impair or impede such applicant's ability to protect that interest, unless the President or the State shows that the applicant's interest is adequately represented by existing parties.

"(d) In any action under this section, the United States or the State may intervene as a matter of right.

"(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(f) Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief (including relief against the President or a State agency).".

HAZARDOUS SUBSTANCE RESEARCH AND TRAINING

SEC. 151. (a) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new section:

"HAZARDOUS SUBSTANCE RESEARCH AND TRAINING

"SEC. . (a) AUTHORITIES.—The Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency may each, consistent with their respective missions, support the following health-related activities through grants, cooperative agreements, and contracts—

"(1) Research (including epidemiologic and ecologic studies) in—

"(A) advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances;

"(B) methods to assess the risks to human health presented by hazardous substances, including workplace hazard assessment;

"(C) methods and technologies to detect hazardous substances in the environment and methods and technologies to reduce the amount and toxicity of hazardous substances, including recycling, incineration, biodegradation, chemical inactivation, and encapsulation; and

"(D) improved health and safety practices in, and equipment for the handling and disposal of hazardous substances.

"(2) Training, including—

"(A) short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the

hazards to human health presented by such facilities; and

"(B) graduate training in environmental and occupational health and in the public health aspects of hazardous waste control.

"(b) AWARDS.—A grant, cooperative agreement, or contract may be made or entered into under this section by the Administrator of the Environmental Protection Agency or the Secretary of Health and Human Services (through the National Institute of Environmental Health Sciences or other appropriate agency or, in the case of training, through the National Institute for Occupational Safety and Health or other appropriate agency), with an accredited institution of higher education, a research institution, a State or local health agency, or other entity as the Secretary or the Administrator deems appropriate. Awards under this subsection shall be subject to peer review in a manner substantially similar to that of section 475 of the Public Health Service Act.

"(c) ADVISORY COUNCIL.—To assist in the implementation of this section, the Secretary and the Administrator may each, or they may jointly, appoint an advisory council. Such council(s) shall be representative of the relevant Federal Government agencies, the chemical industry, the toxic waste management industry, institutions of higher education,

State and local health and environmental agencies, and the general public.

"(d) PLANNING.—Within one year after the enactment of the Superfund Improvement Act of 1985, the Secretary and the Administrator shall complete a joint plan for the implementation of this section and shall report to the Congress on the plan and the implementation. The head of the Agency for Toxic Substances and Disease Registry shall coordinate the plan, which shall be drawn up with the participation of the Directors of the National Institute of Environmental Health Sciences and the National Institute for Occupational Safety and Health, and other officials as the Secretary and the Administrator deem appropriate.".

(b) Section 111(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new paragraph:

"(   ) the cost of carrying out the research and training program under section   , to the extent that such costs do not exceed $5,000,000 for fiscal year 1986; $10,000,000 for fiscal year 1987; $20,000,000 for fiscal year 1988; $35,000,000 for fiscal year 1989; and $40,000,000 for fiscal year 1990;".

CONTRACTOR INDEMNIFICATION

SEC. 152. Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new section:

"INDEMNIFICATION OF CONTRACTORS

"Sec. . (a)(1) The President shall, in contracting, or arranging for response action to be undertaken pursuant to contracts or cooperative agreements in accordance with section 104(d)(1) of this Act, and funded in accordance with section 111 of this Act, agree to hold harmless and indemnify a contracting or subcontracting party against claims, including the expenses of litigation or settlement, by third persons for death, bodily injury or loss of or damage to property arising out of performance of a cleanup agreement to the extent not covered by available insurance and to the extent that any such damages awarded do not arise out of the negligence, recklessness, or intentional misconduct of the contracting or subcontracting party.

"(2) The President may, in the President's discretion, agree to hold harmless and indemnify a contracting or subcontracting party against such claims to the extent not covered by available insurance and to the extent that any such damages awarded do not arise out of the gross negligence, recklessness, or intentional misconduct of the contracting or subcontracting party, so long as such indemnification is in the public interest.

"(b)(1) Amounts expended pursuant to this section shall be considered costs of response to the release with respect to which resulted in liability. Costs incurred in the defense of

suits against indemnified parties under subsection (a)(1) may be paid to such contractor in a timely manner, in quarterly or other increments, unless and until such contracting or subcontracting party is proven negligent in a court or such contractor accepts liability for negligent action. The United States shall not otherwise participate, directly or indirectly, in the defense of contracting parties unless the United States is named as a first party defendant. No other amounts shall be expended pursuant to this section until after entry of a judgment or a final order.

"(2) Indemnification contracts entered into pursuant to this section shall not be subject to section 1301 or 1340 of title 31 or section 11 of title 41 of the United States Code.".

ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH

SEC. 153 (a) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new section:

"ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH

"SEC. 119. (a)(1) The President is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies that may be utilized in response actions under section 104 or section 106 of this Act to achieve

more permanent protection of the public health and welfare and the environment.

"(2) In carrying out the program established by this section, the President shall conduct a technology transfer program, including the development, collection, evaluation, coordination and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The President shall establish and maintain a central reference library for such information. The information maintained by the President shall be made available to the public.

"(3) In carrying out activities under subsection (1), the President is authorized to enter into contracts and cooperative agreements with, and make grants to, any persons including public entities, accredited institutions of higher learning, and nonprofit private entities (as defined by 26 U.S.C. 501(c)(3)). The President shall, to the maximum extent possible, enter into appropoiate cost-sharing arrangements under this section.

"(b)(1) The President may, consistent with the provisions of this section, provide assistance or information to any persons, including public entities, accredited institutions of higher learning, and nonprofit private entities who wish to have alternative and innovative treatment technologies tested or evaluated for utilization in response activities.

"(2) The President may arrange for the use of sites, either wholly or in part, listed as national priority sites under section 105(a)(8)(B), or at which a response is taken pursuant to section 104 or 106, for the purposes of research, testing, evaluation, development, and demonstration under such terms and conditions as the President shall require to assure the protection of human health and the environment.

"(3) Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(c) To carry out the program authorized by this section, the President shall, within 2 years after the date of enactment of this section, and after notice and an opportunity for public comment, designate at least 10 sites listed under section 105(a)(8)(B) as appropriate for field demonstrations of alternative or innovative treatment technologies, after analyzing sites for potential response actions. If the President determines that 10 sites cannot be designated consistent with the criteria of this subsection, the President shall within the 2-year period report to the Environment and Public Works Committee of the Senate, and the Science and Technology Committee, the Energy and Commerce Committee, and the Public Works and Transportation Committee of the House of Representatives explaining the reasons for the failure to designate such sites. Other funding priorities shall not be deemed sufficient explanation under this subsection for fail-

ure to designate such sites. Not later than 12 months after designation of a site under this section, the President shall begin or cause to begin a demonstration of alternatives or innovative treatment technologies at such site. In designating such sites under this section, the President shall, consistent with the protection of human health and the environment, consider each of the following criteria:

"(1) The potential for contributing to solutions to those waste problems that pose the greatest threat to human health, which cannot be adequately controlled with present technologies, or which otherwise pose significant management difficulties.

"(2) The availability of technologies that have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(3) The suitability of the sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the sites, the capability to conduct demonstrations in such a manner as to assure the protection of human health and the environment, and the comments of the public.

"(4) The likelihood that the data to be generated from the demonstration at the site will be applicable to other sites.

"(d) In selecting alternative or innovative treatment technologies for use in response actions under this title, the President shall determine that response actions incorporating such technologies provide for cost-effective response if their life cycle cost does not exceed the life cycle of the most effective alternative by more than 300 per centum.

"(e) For the purposes of this section, the term 'alternative or innovative treatment technologies' means those technologies that permanently alter the composition of hazardous waste through chemical, biological or physical means so as to signficantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. This term also includes technologies that characterize or assess the extent of contamination or the chemical or physical character of the contaminents at such sites.

"(f) REPORTS TO CONGRESS.—(1) At the time of the submission of the annual budget request to Congress, the President shall submit a report to the Environment and Public Works Committee of the Senate and the Science and Technology Committee; the Energy and Commerce Committee, and the Public Works and Transportation Committee of the House of Representatives on the progress of the research, development, and demonstration program authorized by this Act, including an evaluation of the demonstration projects

undertaken, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous substances, the costs of such demonstrations, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(2) If the total estimated Federal contribution to the cost of any field demonstration project under section (a) exceeds $5,000,000, the President shall provide a full and comprehensive report on the proposed demonstration project to the Environment and Public Works Committee of the Senate, and the Science and Technology Committee, the Energy and Commerce Committee, and the Public Works and Transportation Committee of the House of Representatives, and no funds may be expended for such project under the authority granted by this section prior to the expiration of 30 calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain) from the date on which the President's report on the proposed project is received by the Congress.

"(g) The President shall, to the maximum extent practicable, provide adequate opportunity for small business participation in the activities authorized under this Act.".

(b) Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended as follows:

(1) Strike out "and" at the end of paragraph (8)(B).

(2) Strike out the period at the end of paragraph (9) and substitute "; and".

(3) Add the following new paragraph at the end thereof:

"(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.".

(c) Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection:

"(   ) There is authorized to be appropriated for each of the fiscal years 1986, 1987, 1988, 1989, and 1990, from sums appropriated or transferred to the Hazardous Substance Response Trust Fund under section 9505(b)(1)(c) of the Internal Revenue Code of 1954, not more than $25,000,000 to be used for purposes of carrying out the research, development and demonstration program for alternative or innovative technologies authorized under section 116. Amounts

made available under this subsection shall remain available until expended.".

(d) Within 4 years from the date of the enactment of this section, the President shall transmit to Congress a study of the effects of the standards of liability and financial responsibility requirements imposed by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies.

ADMINISTRATIVE CONFERENCE RECOMMENDATION

SEC. 154. The Congress finds that recommendation 84–4 of the Administrative Conference of the United States (adopted June 29, 1984) is generally consistent with the goals and purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and that the Administrator should consider such recommendation and implement it to the extent that the Administrator determines that such implementation will expedite the cleanup of hazardous substances which have been released into the environment.

PROCUREMENT PROCEDURES

SEC. 155. Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new section at the end thereof:

"PROCUREMENT PROCEDURES

"SEC. . Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.".

RADON PROTECTION AT CURRENT NATIONAL PRIORITIES LIST SITES

SEC. 156. It is the sense of the Congress that the President, in selecting response action for facilities included on the National Priorities List published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 because of the presence of radon, is not required by statute or regulations to use fully demonstrated methods, particularly those involving the offset transport and disposition of contaminated material, but may use innovative or alternative methods which protect human health and the environment in a more cost-effective manner.

PROPOSED RECOMMENDED MAXIMUM CONTAMINANT LEVELS OF ORGANIC AND INORGANIC CHEMICALS

SEC. 157. Not later than October 9, 1985, the Director of the Office of Management and Budget shall complete his review and make available for publication in the Federal Register all of the proposed recommended maximum contaminant levels for those organic and inorganic chemicals published by the Administrator of the Environmental Protection Agency in volume 48, Federal Register, page 45502 and submitted by the Administrator to the Director prior to April 30, 1985.

CENTERS TO STUDY THE BIOLOGICAL AND GENETIC EFFECTS OF WASTES AND MATERIALS FOUND IN THE ENVIRONMENT

SEC. 158. Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "develop and construct regional centers at appropriately qualified universities, research and medical institutions for the study of the biological and genetic effects of wastes and materials found in the environment".

CENTERS FOR THE STUDY OF BIOLOGICAL AND GENETIC EFFECTS ON HUMANS, ANIMALS AND PLANTS OF WASTES AND MATERIALS FOUND IN THE ENVIRONMENT

SEC. 159. Section 111(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following: "subject to such amounts as are provided in appropriations Acts, all costs necessary to develop and construct regional centers for study of the biological and genetic effects on humans, animals and plants of wastes and materials found in the environment".

REVIEW OF EMERGENCY SYSTEMS

SEC. 160. (a) The Administrator of the Environmental Protection Agency is directed to initiate, not later than thirty days after enactment of this Act, a comprehensive review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances for the purposes of this review. Such extremely hazardous substances shall be the same substances and quantities listed by the Council of the European Communities in its "Council Directive of June 24, 1982, on the Major Accident Hazards of Certain Industrial Activities, Annex III", published in the official Journal of the European Communities, August 5, 1982. The Admin-

istrator shall report interim findings to the Congress not later than two hundred and ten days after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than three hundred sixty five days after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(b) The report required by this section shall include the Administrator's findings regarding:

(1) the status of current technological capabilities to: (A) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (B) determine the magnitude and direction of the hazard posed by each release, (C) identify specific chemicals, (D) provide data on the specific chemical composition of such releases, and (E) the relative concentrations of the constituent chemicals;

(2) the status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances to the environment, including: releases into the atmosphere, surface water, or groundwater, from facilities that produce, store, or use significant quantities of such extremely hazardous substances; and

(3) the technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances to the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(c) The report required by this section shall also include the Administrator's recommendations for:

(1) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(2) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

POST CLOSURE LIABILITY PROGRAM STUDY, REPORT TO CONGRESS AND SUSPENSION OF LIABILITY TRANSFERS

SEC. 161. (a) Subsection (k) of section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding at the end thereof the following new paragraphs:

"(5)(A) The Administrator shall conduct a study of options for a program to finance the post-closure maintenance of hazardous waste treatment, storage, and disposal sites in a manner which complements the

policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

"(B) A report setting forth the conclusions of such study and recommendations of the Administrator shall be submitted to the Congress not later than March 1, 1988.

"(C) The study shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities, and for different classes of land disposal facilities, and shall include but not be limited to—

"(i) the current and future financial capabilities of facility owners and operators;

"(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

"(iii) the availability of mechanisms by which owners and operators of such facilities can

assure that current and future costs, including post-closure costs, will be financed.

"(D) The recommendations of the Administrator shall include assessments of various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

"(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

"(ii) voluntary risk pooling by owners and operators;

"(iii) legislation to require risk pooling by owners and operators; and

"(iv) modification of the Post-Closure Liability Trust Fund previously establish by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this sub-

section only in the case of insolvency of owners and operators.

"(6) Notwithstanding the provisions of paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Fund previously established by section 232 of this Act prior to completion of the study required under paragraph (5) of this subsection, transmission of such study and report to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.".

DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

SEC. 162. (a) ENVIRONMENTAL RESTORATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense (hereafter in this section referred to as the "Secretary") shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the "Defense Environmental Restoration Program".

(2) APPLICATION OF SECTION 117.—The program shall be carried out subject to section 117 (relating to Federal facilities).

(3) DESIGNATION OF ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have the responsibility for carrying out the program.

(b) PROGRAM GOALS.—Goals of the program shall include the following:

(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances and wastes.

(2) Correction of other environmental damage, such as detection and disposal of unexploded ordnance, which creates an imminent and substantial endangerment to the public health or welfare, or to the environment.

(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of and this title) all response action for which the Secretary is responsible with respect to releases of hazardous substances from each of the following:

(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the administrative jurisdiction of the Secretary.

(B) Each facility or site which was under the administrative jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

(C) Each vessel of the Department of Defense, including vessels owned or bareboat chartered and operated.

(2) STATE FEES AND CHARGES.—The Secretary shall pay all fees and charges imposed by State authorities for permit services for the storage or disposal (or both) of hazardous substances on lands which are under the administrative jurisdiction of the Secretary to the same extent that nongovernmental entities are subject to fees and charges imposed by State authorities for permit services. This requirement shall not apply where such payment is the responsibility of a lessee, contractor, or other private person.

(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements with any other Federal agency, and on a reimbursable or other basis with any State or local

government agency, to obtain the services of that agency to assist the Secretary in carrying out any of his responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contaminations possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's administrative jurisdiction.

(e) Environmental Restoration Transfer Account.—

(1) Establishment of transfer account.—

(A) Establishment.—There is hereby established an annual appropriation account for the Department of Defense to be know as the "Environmental Restoration, Defense" account (hereinafter in this section referred to as the "transfer account"). All sums appropriated to carry out the functions of the Secretary relating to environmental restoration under this or any other Act shall be appropriated to the transfer account.

(B) Requirement of authorization of appropriation.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

(C) Availability of funds in transfer account.—Amounts appropriated to the transfer

account shall remain available until transferred under paragraph (2).

(2) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any other appropriation account or fund. Funds so transferred shall be merged and available for the same purposes and for the same period as the account or fund to which transferred.

(3) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) and subsection (e)(2) may only be obligated or expended from the account or fund to which transferred in order to carryout the functions of the Secretary under this Act of environmental restoration functions under any other Act, including functions for removal of unsafe buildings or debris of the Department of Defense at sites formerly used by the Department of Defense.

(4) LIMITATION ON EXPENDITURES.—

(A) GENERAL RULE.—The Secretary may not obligate or expend funds for purposes of this Act or any other purpose relating to environmental restoration other than funds transferred from the transfer account.

(B) EXCEPTION FOR EMERGENCY RESPONSE ACTION.—The Secretary may obligate or expend funds which are available to the Secretary for operation and maintenance to carry out emergency response actions authorized under this Act whenever the Secretary determines that such obligation or expenditure is necessary to protect the public health or welfare, or the environment. In any such case, the operation and maintenance account concerned shall be reimbursed from the transfer account.

(C) REPROGRAMMING.—Any reprogramming request relating to environmental restoration into the transfer account must be forwarded to the Senate Armed Services Committee, the House Armed Services Committee, the Senate Appropriations Committee and the House Appropriations Committee on a notification basis. The request for reprogramming will be considered approved unless action to the contrary is taken by any one of those committees within a twenty-one-day period beginning on the date of the notification is received by those committees (or after each such committee has approved the reprogramming

request, if the committees approved the request before the end of that period).

(5) AMOUNTS RECOVERED UNDER SUBTITLE A.—Amounts recovered under section 107 for response actions of the Secretary shall be credited to the transfer account (if appropriated by Congress for that purpose).

(f) MILITARY CONSTRUCTION FOR RESPONSE ACTION.—

(1) AUTHORITY.—Subject to subsection (b), the Secretary may carry out a military construction project not otherwise authorized by law if necessary to carry out a response action under this Act.

(2) CONGRESSIONAL NOTICE-AND-WAIT.—

(A) NOTICE TO CONGRESS.—When a decision is made to carry out a military construction project under this section, the Secretary shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the following:

(i) The justification for the project and the current estimate of the cost of the project.

(ii) The justification for carrying out the project under this section.

(iii) A statement of the source of the funds to be used to carry out the project.

(B) OVERSIGHT PERIOD.—The project may then be carried out only after the end of the twenty-one-day period beginning on the date of the notification is received by those committees (or after each such committee has approved the project, if the committees approved the project before the end of that period).

REPORT TO CONGRESS BY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE ATTORNEY GENERAL

SEC. 163. Section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act is amended by adding the following new subsections:

"(   ) The Administrator of the Environmental Protection Agency and the Attorney General shall submit to Congress annually on the first day of January a report including:

"(1) the rules, guidelines, criteria and procedures used to determine which potentially responsible parties to include as defendants in a judicial or administrative enforcement action under this Act;

"(2) the rules, guidelines, criteria, and procedures used to develop facts and information regarding potentially responsible parties at priority sites and to provide such information to potentially responsible parties in order to assist the settlement process;

"(3) the rules, guidelines, criteria and procedures used to determine whether, to what extent, and on what basis to use Fund resources for removal or remedial actions in connection with a settlement or voluntary cleanup.".

HAZARDOUS MATERIALS TRANSPORTATION

SEC. 164. (a) Section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking "within ninety days after the date of enactment of this Act" in the first sentence and inserting in lieu thereof "by June 1, 1986,"; and by inserting the words "and regulate" before the words "as a hazardous material".

"(b) Section 306(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting the words "and regulation" after "prior to the effective date of the listing".

TITLE II—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Superfund Revenue Act of 1985".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of,

a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 202. 5-YEAR EXTENSION OF TAX ON PETROLEUM AND CERTAIN CHEMICALS; CERTAIN EXEMPTIONS.

(a) 5-YEAR EXTENSION; TERMINATION IF FUNDS UNSPENT OR $7,500,000,000 COLLECTED.—

(1) IN GENERAL.—Subsection (d) of section 4611 (relating to termination) is amended to read as follows:

"(d) TERMINATION.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the tax imposed by this subsection shall not apply after September 30, 1990.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND IS MORE THAN CERTAIN AMOUNT.—If, on September 30, 1988, or September 30, 1989—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $2,225,000,000 or $3,000,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $2,225,000,000 or $3,000,000,000 on September 30, 1989, or September 30, 1990, respectively, if no tax is im-

posed under section 4001, 4611, or 4661 during calendar year 1989 or 1990, respectively,

then no tax shall be imposed under this section during calendar year 1989 or 1990, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $7,500,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of—

"(i) the amount of taxes which will be collected under sections 4001, 4611, and 4661 and credited to the Hazardous Substance Superfund, and

"(ii) the amount of interest which will be credited to such Fund under section 9602(b)(3),

during the period beginning October 1, 1985, and ending September 30, 1990.

"(B) TERMINATION IF $7,500,000,000 CREDITED BEFORE SEPTEMBER 30, 1990.—If the Secretary estimates under subparagraph (A) that more than $7,500,000,000 will be credited to the Fund before September 30, 1990, no tax shall be imposed under this section after the date on which

the Secretary estimates $7,500,000,000 will be so credited to the Fund.

"(4) PROCEDURES FOR TERMINATION.—The Secretary shall by regulation provide procedures for the termination under paragraph (2) or (3) of the tax under this section and section 4661.".

(2) CONFORMING AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (relating to expiration of revenue provisions) is repealed.

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) IN GENERAL.—Section 4662 (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) a tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that such person—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.".

(2) REFUND OR CREDIT.—Paragraph (1) of section 4662(d) (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" in subparagraph (B) and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" in the last sentence and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (e) of this section)".

(c) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—

(1) IN GENERAL.—Section 4662(b) (relating to exceptions and other special rules) is amended by adding at the end thereof the following new paragraph:

"(7) RECYCLED CHROMIUM, COBALT, AND NICKEL.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXCEPTION FOR IMPORTS.—This paragraph shall not apply to the sale of any chromium, cobalt, or nickel which is diverted or recovered outside the United States and then imported into the United States.

"(C) CERTAIN PERSONS NOT ELIGIBLE.—

"(i) IN GENERAL.—This paragraph shall not apply to any taxpayer during any period during which the taxpayer is a potentially responsible party for a site which is listed on the National Priorities List published by the Environmental Protection Agency under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, except that such period shall not begin until the Administrator of the Environmental Protection Agency notifies the taxpayer that the taxpayer is such a party.

"(ii) EXCEPTION WHERE TAXPAYER IS IN COMPLIANCE.—*Clause (i) shall not apply to any portion of the period during which the taxpayer is in compliance with each order, decree, or judgment issued against the taxpayer with respect to the site in any action or proceeding under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, or both.*

"(D) SOLID WASTE.—*For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.".*

(2) CREDIT OR REFUND.—*Paragraph (1) of section 4662(d), as amended by subsection (b)(2), is amended by inserting "(b)(7) or" before "(e)" in the last sentence thereof.*

(d) TAX EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—*Subsection (b) of section 4662 (relating to definitions and special rules with respect to*

the tax on certain chemicals), as amended by subsection (c)(1), is amended by adding at the end thereof the following paragraph:

"(8) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or

animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.".

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(8), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(8) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.".

(e) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsection (b), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) EXCEPTION FOR EXCHANGES WHERE RECIPIENT NOT TAXABLE.—Subparagraph (A) shall not apply to any inventory exchange if the person receiving the taxable chemical would not be subject to tax on the sale of such chemical (other than by reason of subsection (b)).

"(C) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(D) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means an exchange in which a person ex-

changes property which, in the hands of such person, is property described in section 1221(1) for property of another person which, in such other person's hands, is so described.".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 1985.

(2) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the amendment made by subsection (e) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (e) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of the Internal Revenue Code of 1954 and paid the tax imposed by such section.

(C) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(C) of such Code (as added by

subsection (e)) shall apply to exchanges made after December 31, 1985.

SEC. 203. IMPOSITION OF SUPERFUND EXCISE TAX.

(a) IN GENERAL.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting before chapter 31 the following new chapter:

"CHAPTER 30—SUPERFUND EXCISE TAX

"SUBCHAPTER A. Imposition of tax.
"SUBCHAPTER B. Taxable transaction.
"SUBCHAPTER C. Taxable amount; exempt transactions; credit against tax.
"SUBCHAPTER D. Administration.
"SUBCHAPTER E. Definitions; special rules.

"Subchapter A—Imposition of Tax

"Sec. 4001. Imposition of tax.
"Sec. 4002. Termination.

"SEC. 4001. IMPOSITION OF TAX.

"(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

"(b) AMOUNT OF TAX.—Except as otherwise provided in this chapter, the amount of the tax shall be .08 percent of the taxable amount.

"SEC. 4002. TERMINATION.

"(a) IN GENERAL.—No tax shall be imposed under this section after December 31, 1990.

"(b) NO TAX IF FUNDS UNSPENT OR $7,500,000,000 COLLECTED.—No tax shall be imposed under subsection (a) during any period during which no tax is imposed under section 4611(a) by reason of paragraph (2) or (3) of section

4611(d), except that section 4611(d)(3) shall, for purposes of this subsection, be applied by substituting 'December 31, 1990' for 'September 30, 1990' each place it appears.

"(c) PROCEDURES FOR TERMINATION.—

"(1) PRORATION OVER TAXABLE PERIOD.—In the case of any taxable period which begins before and ends after the date of any termination under this section, the tax imposed by section 4001 (and the credit allowable under section 4013) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined without regard to the termination) as—

"(A) the number of days in such taxable period up to and including the date of termination, bears to

"(B) the number of days in such taxable period.

"(2) OTHER PROCEDURES.—The Secretary shall by regulation provide such procedures for a termination under this section as the Secretary determines necessary.

"SUBCHAPTER B—TAXABLE TRANSACTION

"Sec. 4003. Taxable transaction.
"Sec. 4004. Taxable person.

"SEC. 4003. TAXABLE TRANSACTION.

"(a) IN GENERAL.—For purposes of this chapter, the term 'taxable transaction' means—

"(1) the sale or leasing of tangible personal property in the United States by a taxable person in connection with a trade or business, or

"(2) the importing of tangible personal property into the customs territory of the United States by a taxable person.

"(b) EXEMPT TRANSACTIONS.—For exempt transactions, see section 4012.

"SEC. 4004. TAXABLE PERSON.

"Except as otherwise provided in this chapter, for purposes of this chapter, the term 'taxable person' means—

"(1) in the case of a taxable transaction described in paragraph (1) of section 4003(a)—

"(A) the manufacturer of the tangible personal property, or

"(B) any person who included the costs of the tangible personal property in such person's qualified inventory costs, and

"(2) in the case of a taxable transaction described in paragraph (2) of section 4003(a), the importer of the tangible personal property.

"*SUBCHAPTER C—TAXABLE AMOUNT; EXEMPT TRANSACTIONS; CREDIT AGAINST TAX*

"*Sec. 4011. Taxable amount.*
"*Sec. 4012. Exempt transactions.*
"*Sec. 4013. Credit against tax on sales and leases.*

"SEC. 4011. TAXABLE AMOUNT.

"(a) SALE.—For purposes of this chapter, the taxable amount for any sale shall be the price (in money or fair market value of other consideration) charged the purchaser of the property by the seller thereof—

"(1) including items payable to the seller with respect to such transaction, but

"(2) excluding the tax imposed by section 4001 with respect to such transaction.

"(b) IMPORTS.—For purposes of this chapter, the taxable amount in the case of any import shall be—

"(1) the customs value plus customs duties and any other duties which may be imposed, or

"(2) if there is no such customs value, the fair market value (determined as if the importer had sold the property).

"(c) LEASES.—For purposes of this chapter, the taxable amount in the case of any lease shall be the gross payments under the lease.

"(d) CONTAINERS, PACKING AND TRANSPORTATION CHARGES; CONSTRUCTIVE SALES PRICE.—Under regulations, rules similar to the rules of subsections (a) and (b) of

section 4216 (relating to containers, packing and transportation charges, etc., and constructive sales price) shall apply in computing the taxable amount.

"(e) SPECIAL RULE WHERE SALE OR LEASE PAYMENTS RECEIVED IN MORE THAN 1 TAXABLE PERIOD.—

"(1) SALES.—In the case of a sale where the consideration is received by the seller in more than 1 taxable period, the taxable amount for each such taxable period shall include that portion of the taxable amount which is includible in the gross income of the taxable person for purposes of chapter 1 for taxable years ending with or within such taxable period (or would be so includible if it were not excludable from gross income).

"(2) LEASES.—In the case of a lease with a term which includes more than 1 taxable period, the taxable amount for each such taxable period shall include the gross lease payments received by the taxable person during such taxable period.

"SEC. 4012. EXEMPT TRANSACTIONS.

"(a) IMPORTS OF $10,000 OR LESS.—No tax shall be imposed under section 4001 on any tangible personal property imported into the customs territory of the United States as part of a shipment (within the meaning of section 498(1) of

the Tariff Act of 1930; 19 U.S.C. 1498(1)) the aggregate taxable amount of which is $10,000 or less.

"(b) EXPORTS.—Under regulations, no tax shall be imposed under section 4001 on the sale of any property which is to be exported outside the United States.

"(c) GOVERNMENTAL ENTITIES AND EXEMPT ORGANIZATIONS EXEMPT FROM TAX ON SALES AND LEASES.—

"(1) GOVERNMENTAL ENTITIES.—No tax shall be imposed under section 4001 on the sale or leasing of any tangible personal property by the United States, any State or political subdivision, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of any of the foregoing.

"(2) EXEMPT ORGANIZATIONS.—No tax shall be imposed under section 4001 on the sale or leasing of any tangible personal property by any organization which is exempt from taxation under chapter 1 by reason of section 501(a), unless the taxable transaction is part of an unrelated trade or business (within the meaning of section 513).

"SEC. 4013. CREDIT AGAINST TAX ON SALES AND LEASES.

"(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by section 4001 for any tax-

able period on taxable transactions described in paragraph (1) of section 4003(a) an amount equal to the greater of—

"(1) .08 percent of the qualified inventory costs of the taxable person for the taxable period, or

"(2) the amount of the tax imposed by section 4001 on such taxable transactions, to the extent such amount does not exceed $4,000.

"(b) LIMITATION BASED ON TAX LIABILITY; CARRYFORWARD OF EXCESS CREDIT.—

"(1) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) for any taxable period shall not exceed the liability for tax imposed by section 4001 for such period.

"(2) CARRYFORWARD OF EXCESS CREDIT.—If the credit allowable under subsection (a) for any taxable period exceeds the limitation imposed by paragraph (1), such credit shall be carried to the succeeding taxable period and added to the credit allowable under subsection (a) for such succeeding taxable period.

"(c) QUALIFIED INVENTORY COSTS.—For purposes of this chapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified inventory costs' means, with respect to any taxable period, the costs of tangible personal property which—

"(A) are allocable to the inventory of a manufacturer under the full absorption method of accounting under section 471, and

"(B) are paid or incurred by the taxable person during such taxable period.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION.—The qualified inventory costs of any taxpayer for any taxable period shall, in lieu of any allowance for depreciation or amortization, include any amount paid or incurred during such taxable period for tangible personal property acquired or leased incident to, and necessary for, production or manufacturing operations or processes.

"(B) TAXPAYERS USING METHODS OF ACCOUNTING OTHER THAN THE FULL ABSORPTION METHOD.—In the case of a taxable person using a method of accounting other than the full absorption method used in determining the inventory of a manufacturer under section 471, the qualified inventory costs of such person shall, except as provided in regulations, include only those costs

included in the inventory of a manufacturer under such full absorption method.

"(C) PROPERTY MANUFACTURED FOR LEASE BY MANUFACTURER.—For purposes of computing qualified inventory costs, any tangible personal property which is manufactured for lease by the manufacturer shall be treated in the same manner as property which is manufactured for sale by the manufacturer.

"(d) SPECIAL RULE FOR TAXPAYERS UNDER COMMON CONTROL.—

"(1) IN GENERAL.—All persons which are—

"(A) members of the same controlled group of corporations (within the meaning of section 52(a)), or

"(B) under common control (within the meaning of section 52(b)),

shall be treated as 1 person for purposes of applying the $4,000 amount under subsection (a)(2).

"(2) ALLOCATION OF $4,000.—The $4,000 amount under subsection (a)(2) shall be allocated among persons described in paragraph (1) in such manner as the Secretary may prescribe by regulations.

"Subchapter D—Administration

"Sec. 4021. Liability for tax.
"Sec. 4022. Return requirement; taxable period; depositary requirements.

"Sec. 4023. Regulations.

"SEC. 4021. LIABILITY FOR TAX.

"The taxable person shall be liable for the tax imposed by section 4001.

"SEC. 4022. RETURN REQUIREMENT; TAXABLE PERIOD; DEPOSITARY REQUIREMENTS.

"(a) RETURN REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4001 for any taxable period not later than—

"(A) the due date (including extensions) for filing the taxpayer's return of tax under chapter 1, or

"(B) if there is no return of tax under chapter 1, the due date (including extensions) under chapter 1 for a taxable year which is the calendar year.

"(2) EXCEPTION FOR SALES OR LEASES OF $5,000,000 OR LESS.—A taxable person shall not be required to file a return for any taxable period for taxable transactions described in paragraph (1) of section 4003(a) if the aggregate taxable amount for such transactions is $5,000,000 or less.

"(3) OTHER EXCEPTIONS.—The Secretary may by regulation exempt any taxable person from the requirement of paragraph (1).

"(b) TAXABLE PERIOD.—For purposes of this chapter, the term 'taxable period' means—

"(1) the taxable person's taxable year for purposes of chapter 1, or

"(2) if there is no taxable year for purposes of chapter 1, the calendar year.

"(c) DEPOSITARY REQUIREMENTS.—

"(1) IN GENERAL.—In the case of any person with respect to whom a tax is imposed under section 4001 for any taxable period on any taxable transaction described in paragraph (1) of section 4003(a), such person shall make quarterly deposits of the estimated amount of such tax for the succeeding taxable period.

"(2) SPECIAL RULE FOR 1ST TAXABLE PERIOD.—Notwithstanding paragraph (1), a deposit shall be required for the first taxable period of any taxable person to which this chapter applies if the gross receipts of such person during the first taxable year ending before such taxable period from the sale or leasing of tangible personal property manufactured by such person exceed $50,000,000.

"SEC. 4023. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this chapter.

"Subchapter E—Definitions; Special Rules

"Sec. 4031. Definitions; special rules.

"SEC. 4031. DEFINITIONS; SPECIAL RULES.

"(a) MANUFACTURING.—For purposes of this chapter—

"(1) PRODUCTION INCLUDED.—The term 'manufacturing' includes the production of tangible personal property, including raw materials.

"(2) CERTAIN ACTIVITIES NOT INCLUDED IN MANUFACTURING.—The term 'manufacturing' does not include—

"(A) the furnishing of services incidental to storage or transportation of property,

"(B) the preparation of food in a restaurant or other retail food establishment, or

"(C) the incidental preparation of property by a retailer or wholesaler (including routine assemblage).

"(b) MANUFACTURER.—For purposes of this chapter, the term 'manufacturer' includes any producer of tangible personal property (including raw materials), but does not include any person conducting an activity described in subsection (a)(2).

"(c) PERSON.—For purposes of this chapter, the term 'person' includes any governmental entity.

"(d) UNITED STATES.—For purposes of this chapter, the term 'United States', when used in a geographical sense, includes a Commonwealth and any possession of the United States.

"(e) TANGIBLE PERSONAL PROPERTY.—For purposes of this chapter, the term 'tangible personal property' does not include unprocessed agricultural products or unprocessed food products.

"(f) UNPROCESSED AGRICULTURAL PRODUCTS.—For purposes of this chapter, the term 'unprocessed agricultural product' includes timber and fish.

"(g) CUSTOMS TERRITORY OF THE UNITED STATES.—For purposes of this chapter, the term 'customs territory of the United States' has the meaning given such term by headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States (19 U.S.C. 1202).

"(h) TAX ON IMPORT IN ADDITION TO DUTY.—The tax imposed by section 4001 on the importing of any tangible personal property shall be in addition to any duty imposed on such importation.

"(i) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of sub-

sections (a)(3) and (b)(3) of section 7652 and any similar provision of law which requires an internal revenue tax collected by the United States to be paid to a Commonwealth or possession of the United States shall not apply to any tax imposed by section 4001.

"(j) SPECIAL RULE FOR SHORT TAXABLE PERIODS.—In the case of a taxable period which is less than 1 calendar year, there shall be substituted for the $4,000 amounts in subsections (a) and (d) of section 4013 and the $5,000,000 amount in section 4022(a)(2) the amount which bears the same ratio to such amounts as the number of days in the taxable period bears to 365.

"(k) SALE TO INCLUDE CERTAIN EXCHANGES AND TRANSFERS.—For purposes of this chapter, except as provided in regulations, the term 'sale' includes any exchange or transfer other than a gift (within the meaning of section 102 or section 170).".

(b) APPLICATION OF CERTAIN PENALTIES.—

(1) FAILURE TO FILE RETURN OR PAY TAX.—Paragraph (1) of section 6651(a) (relating to addition to tax) is amended by inserting "section 4022 (relating to Superfund excise tax)," before "subchapter A of chapter 51".

(2) NEGLIGENCE PENALTY.—Section 6653(a) (relating to negligence or intentional disregard of rules and regulations) is amended—

(A) by inserting ", by chapter 30 (relating to Superfund excise tax)," after "subtitle B" in paragraph (1) thereof, and

(B) by striking out "Windfall Profit" in the heading thereof and inserting in lieu thereof "Certain Excise".

(3) FAILURE TO MAKE DEPOSITS.—Section 6656 (relating to failure to make deposit of taxes or overstatement of deposits) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULE FOR SUPERFUND EXCISE TAX.—For purposes of subsection (a), in the case of the tax imposed by section 4001, the tax required to be deposited shall be equal to the lesser of—

"(1) 90 percent of the tax imposed by section 4001 during the taxable period on taxable transactions described in paragraph (1) of section 4003(a), or

"(2) the amount of such tax imposed during the preceding taxable period (determined on an annual basis).

Paragraph (2) shall not apply if no tax was imposed during the preceding taxable period.".

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting before the item relating to chapter 31 the following new item:

"CHAPTER 30. Superfund excise tax.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to taxable amounts received in taxable periods beginning after December 31, 1985.

(2) SPECIAL RULE FOR IMPORTS.—In the case of imports, the amendments made by this section shall apply to articles entered, or withdrawn from warehouse, for consumption after December 31, 1985.

(3) SPECIAL RULE FOR TAXABLE PERIOD INCLUDING JANUARY 1, 1985.—In the case of any taxable period which begins before January 1, 1985, and ends after January 1, 1985, the tax imposed by section 4001 of the Internal Revenue Code of 1954 (and the credit allowable under section 4013 of such Code) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined as if such tax and credit had been in effect for the entire taxable period) as—

(A) the number of days in such taxable period after December 31, 1985, bears to

(B) the number of days in such taxable period.

SEC. 204. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 (relating to establishment of trust funds) is amended by adding at the end thereof the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section, or

"(2) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—

"(1) IN GENERAL.—There are hereby appropriated to the Superfund amounts equivalent to—

"(A) the taxes received in the Treasury under section 4001 (relating to Superfund excise tax),

"(B) the taxes received in the Treasury under section 4611 or 4661 (relating to taxes on petroleum and certain chemicals),

"(C) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(D) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(E) penalties assessed under title I of CERCLA, and

"(F) punitive damages under section 107(c)(3) of CERCLA.

"(2) TRANSFER OF CERTAIN OTHER FUNDS.—There shall be transferred to the Superfund—

"(A) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year, and

"(B) the unobligated balance in the Post-closure Liability Trust Fund as of October 1, 1985.

"(c) EXPENDITURES FROM THE SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 of CERCLA (other than subsection (j) thereof) as in effect on the date of the en-

actment of the Superfund Improvement Act of 1985, including—

"(A) response costs,

"(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

"(C) claims for injury to, or destruction or loss of, natural resources, and

"(D) related costs described in section 111(c) of CERCLA (other than paragraph (7) thereof).

"(2) LIMITATIONS ON EXPENDITURES.—At least 85 per centum of the amounts appropriated to the Superfund shall be reserved—

"(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of CERCLA, and

"(B) for the repayment of advances made under subsection (d), other than advances subject to the limitation of subsection (d)(2)(B).

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATIONS ON ADVANCES TO SUPERFUND.—

"(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount which the Secretary estimates will be equal to the sum of the amounts described in paragraph (1) of subsection (b) which will be transferred to the Superfund during the following 12 months.

"(B) ADVANCES FOR CERTAIN COSTS.—The maximum aggregate amount advanced to the Superfund which is outstanding at any one time for purposes of paying costs other than costs described in section 111 (a)(1), (2), or (4) of CERCLA shall not exceed 15 percent of the amount of the estimate made under subparagraph (A).

"(C) FINAL REPAYMENT.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before December 31, 1990.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made pursuant to this subsection shall be repaid, and interest

on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund (or when required by paragraph (2)(C)).

"(B) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Improvement Act of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect

to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund is unable (by reason of paragraph (1)) to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.".

(b) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 is amended by adding at the end thereof the following new item:

"Sec. 9505. Hazardous Substance Superfund.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1985.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

SEC. 205. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) REFUND OF UNOBLIGATED BALANCE.—An amount equal to the unobligated balance in the Post-Closure Liability Trust Fund as of October 1, 1985, which is transferred into the Hazardous Substance Superfund pursuant to section 9505(b)(2) of the Internal Revenue Code of 1954, shall be paid out from such Superfund, effective March 1, 1989, as refunds of the taxes paid under section 4681 of such Code (as in effect prior to October 1, 1985), unless, prior to March 1, 1989, congressional action has been taken pursuant to section 107(k)(6) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such refunds shall be paid on a proportional basis to the amounts of such taxes paid, and without interest.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 206. INDUSTRIAL DEVELOPMENT BONDS FOR HAZARDOUS WASTE TREATMENT FACILITIES.

(a) IN GENERAL.—Paragraph (4) of section 103(b) (relating to certain exempt activities) is amended—

(1) by inserting ", facilities subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act for the treatment of hazardous waste," after "solid waste disposal facilities" in subparagraph (E), and

(2) by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the terms 'treatment' and 'hazardous waste' have the meanings given to such terms by section 1004 of the Solid Waste Disposal Act.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 207. REPORT ON METHODS OF FUNDING SUPERFUND.

Not later than January 1, 1988, the Comptroller General of the United States or his delegate shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to various methods of funding the Hazardous Substances Superfund, including a study of the effect of taxes on the generation and disposal of hazardous wastes.

SEC. 208. CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTIONS.

(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct

costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facilitly by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning

given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

SEC. 209. SENSE OF THE SENATE RELATING TO THE VALUE ADDED TAX.

(a)(1) The Value Added Tax is a regressive tax which places the burden of paying for pollution on persons other than those responsible for it.

(2) The Value Added Tax on H.R. 2005 represents a dangerous shift toward the principle of a broad-based tax on sales.

(3) The Value Added Tax has escalated rapidly in virtually every country in which it has been implemented.

(4) The administration has stated, in a September 16, 1985, Statement of Administration Policy the "(t)he President's senior advisors will recommend disapproval of any legislation containing a value-added or other broad-based tax".

(5) The House of Representatives is expected to adopt a financing mechanism for the Superfund bill which will not include the Value Added Tax.

(6) The Administration will not be prepared to release its alternative to the Value Added Tax until after the Senate has completed action on the Superfund legislation.

(7) Prolonged debate on the floor of the Senate concerning an alternative to the Value Added Tax would unduly delay, consideration of this legislation.

(b) The sense of the Senate that the committee on conference on H.R. 2005 or such other comparable Superfund reauthorization legislation as shall be approved by both Houses of Congress should report legislation containing a reliable financing mechanism for the Superfund program which does not include the Value Added Tax.

TITLE III—LEAD FREE DRINKING WATER

SHORT TITLE

SEC. 301. This title may be cited as the "Lead Free Drinking Water Act."

SAFE DRINKING WATER ACT AMENDMENTS

SEC. 302. (a) IN GENERAL.—Part B of title XIV of the Public Health Service Act is amended by adding at the end thereof the following new section:

"PROHIBITION ON USE OF LEAD PIPES, SOLDER, AND FLUX

"SEC. 1417. (a) IN GENERAL.—

"(1) PROHIBITION.—Any pipe, solder, or flux, which is used after date of enactment of the Safe Drinking Water Act of 1985, in the installation or repair of—

"(A) any public water system, or

"(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system,

must be lead free (as defined in subsection (d)). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.

"(2) PUBLIC NOTICE OF ADVERSE EFFECTS.—Each community public water system shall provide notice, developed in consultation with the Administrator, to all users of the system with respect to—

"(A) the adverse health effects of exposure to lead, including a description of those populations which may be particularly sensitive to such exposure; and

"(B) any means reasonably available to such users for mitigating lead exposure from drinking water, taking into consideration the need to conserve water.

"(b) STATE ENFORCEMENT.—

"(1) ENFORCEMENT OF PROHIBITION.—The requirements of subsection (a)(1) shall apply to all States effective 24 months after the date of the enactment of this section. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

"(2) ENFORCEMENT OF PUBLIC NOTICE REQUIREMENTS.—The requirements of subsection (a)(2)

shall apply to all States effective 24 months after the date of the enactment of this section.

"(c) PENALTIES.—If the Administrator determines that a State is not enforcing the requirements of subsection (a) as required pursuant to subsection (b), the Administrator may commence a civil action under section 1414(b).

"(d) DEFINITION OF LEAD FREE.—For purposes of this section, 'lead free' means solders and flux containing not more than 0.2 percent lead, and pipes and pipe fittings containing not more than 6.0 percent lead.".

(b) CIVIL ACTION.—Section 1414(b) of the Public Health Service Act is amended—

(1) in the matter preceding paragraph (1), by inserting ", or with section 1417," after "or 1416"; and

(2) in paragraph (1), by inserting ", or under section 1417" after "subsection (a)".

(c) NOTIFICATION TO STATES.—The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act within 90 days after the date of the enactment of this Act.

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY

SEC. 303. (a) PROHIBITION.—(1) The Secretary of Housing and Urban Development and the Administrator of

Veterans' Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

(2) For purposes of paragraph (1), "lead free" means solders and flux containing not more than 0.2 percent lead, and pipes and pipe fittings containing not more than 6.0 percent lead.

(b) EFFECTIVE DATE.—Subsection (a) shall become effective 24 months after the date of the enactment of this Act.

LEAD SOLDER AS A HAZARDOUS SUBSTANCE

SEC. 304. (a) IN GENERAL.—Section 2(f)(1) of the Federal Hazardous Substances Act is amended by adding at the end thereof the following:

"(E) Any solder which has a lead content in excess of 0.2 percent.".

(b) LABELING.—Section 4 of the Federal Hazardous Substances Act is amended by adding at the end thereof the following:

"(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of such solder in the making of joints or fittings in any private or public potable water supply system is prohibited.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective 24 months after the date of the enactment of this Act.

TITLE IV—POLLUTION INSURANCE

AMENDMENTS RELATED TO THE INSURANCE OF POLLUTION LIABILITY

SEC. 401. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. This title may be cited as the 'Pollution Liability Insurance and Risk Retention Act'.

"DEFINITIONS

"SEC. 402. (a) As used in this title—

"(1) 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

"(2) 'pollution liability' means liability for injuries arising from the release of hazardous substances, pollutants or contaminants;

"(3) 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability or of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis; and

"(5) 'State' means any State of the United States or the District of Columbia.

"(b) Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this Act,

including recognition or qualification of risk retention groups or purchasing groups.

"(c) The authority to offer or to provide insurance under this title shall be limited to coverage of pollution liability risks and this title does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

"RISK RETENTION GROUP EXEMPT FROM STATE LAWS

"SEC. 403. (a) Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

"(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

"(A) comply with the unfair claim settlement practices law of the State;

"(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State;

"(C) participate, on a nondiscrimatory basis, in any mechanism established or authorized under

the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism;

"(D) submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses;

"(E) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process, and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction;

"(F) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not

begun or has refused to initiate an examination of the group; and

"(G) comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F) of this paragraph;

"(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

"(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

"(4) otherwise discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

"(b) The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(c) A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"PURCHASING GROUPS

"SEC. 404. (a) Except as provided in this section, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

"(1) prohibit the establishment of a purchasing group;

"(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other

persons with respect to rates, policy forms, coverages, or other matters;

"(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

"(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

"(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

"(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

"(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

"(8) otherwise discriminate against a purchasing group or any of its members.

"(b) The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group; and

"(2) the sale of—

"(A) pollution liability insurance, and comprehensive general liability coverage;

"(B) insurance related services; or

"(C) management services;

to a purchasing group or member of the group.

"(c) A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"APPLICABILITY OF SECURITIES LAWS

"SEC. 405. (a) The ownership interests of members in a risk retention group shall be—

"(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933

and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

"(c) The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

TITLE V—INDOOR AIR QUALITY RESEARCH

SEC. 501. SHORT TITLE.—This title may be cited as the "Indoor Air Quality Research Act of 1985".

SEC. 502. FINDINGS.—The Congress finds that—

(1) indoor air exposures account for a significant portion of total human exposures to hazardous pollutants and contaminants in the environment;

(2) various scientific studies have suggested that indoor air pollution, including exposure to naturally occurring chemical elements such as radon, poses a significant public health and environmental risk;

(3) high levels of radon have been measured within structures throughout the country and within the Reading Prong;

(4) existing Federal indoor air quality research programs are fragmented and underfunded;

(5) the Environmental Protection Agency's programs on indoor air quality and radon have been hindered by a lack of clear statutory authority for conducting research on indoor air quality; and

(6) an adequate information base concerning potential indoor air quality problems, including exposure to radon, does not currently exist and should be developed by the Federal Government.

SEC. 503. INDOOR AIR QUALITY RESEARCH PROGRAM.—

(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to indoor air quality, including radon. Such program shall be designed to—

(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

(A) the measurement of various pollutant concentrations and their strengths and sources,

(B) high-risk building types, and

(C) instruments for indoor air quality data collection;

(2) research relating to the effects of indoor air pollution and radon on human health;

(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

(4) demonstrations of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and the radon content of soil; and

(B) design measures to avoid indoor air pollution; and

(6) the dissemination of information to assure the public availabililty of the findings of the activities under this section.

(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for indoor air quality.

(d) IMPLEMENTATION PLAN.—Not later than ninety days after the date of the enactment of this Act, the Administrator shall submit to the Congress a plan for implementation of the research program under this

section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

(e) INTERIM REPORT.—No later than one year after the date of this Act, the Administrator shall prepare an interim report providing—

(A) a preliminary identification of the locations and amounts of radon in structures across the United States, and

(B) guidance and information materials based on the findings of research of methods for mitigating radon.

(f) REPORT.—

(1) Not later than two years after the date of enactment of this Act, the Administrator shall, in consultation with advisory committees and groups identified in subsection (c), submit to the Congress a report assessing—

(A) the state of knowledge concerning the risks to human health associated with indoor air pollution, including naturally occurring chemical elements such as radon;

(B) the locations and amounts of indoor air pollutants, including radon, in residen-

tial, commercial, and other structures throughout the country;

(C) the existing standards for indoor air pollutants, including radon, suggested by Federal or State Governments or scientific organizations and the risk to human health associated with such standards;

(D) the research needs and relative priority of these needs;

(E) the potential effectiveness of possible government actions necessary to mitigate the environmental and health risks associated with indoor air quality problems, including radon, in existing and in future structures,

and making such recommendations as may be appropriate.

(2) In developing such report, the Administrator shall consult with the National Academy of Sciences on the scientific issues regarding the quality of indoor air and the risks to human health associated with indoor air pollution.

(g) CONSTRUCTION OF SECTION.—Nothing in this section shall be construed to authorize the Administrator to carry out any regulatory program or any activity other thn research, development, and the related

reporting, information dissemination, and coordination activities specified in this section. Nothing in this section shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

(h) AUTHORIZATIONS.—There are authorized to be appropriated to carry out the activities under this section not to exceed $3,000,000 for each of the fiscal years 1986 and 1987.

Amend the title so as to read: "An Act to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.".

Passed the House of Representatives May 14, 1985.

Attest:

Clerk.

Passed the Senate September 26 (legislative day, September 23), 1985.

Attest:

Secretary.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I ask unanimous consent that H.R. 2005, as passed by the Senate, be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. I should like to express my deep appreciation to Senator BENTSEN, to the staff of the Committee on Environment and Public Works, to the staff of the Committee on the Judiciary, to the staff of the Committee on Finance, and to the chairman of the latter committee, Senator PACKWOOD, for their assistance in getting this bill passed, as a team effort among all of us.

Mr. BRADLEY. Mr. President, I should like to offer my congratulations and express my appreciation to the distinguished chairman of the Committee on Environment and Public Works for delivering on his promise in obtaining action on this bill, to get some of the toxic dumps around the country cleaned up. I salute him for his leadership on this issue and express my appreciation.

Mr. STAFFORD. I thank the gracious Senator from New Jersey for his kind words. It was his help, along with that of others, that made this possible.

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